

UiO • **Det juridiske fakultet**

# Manifestly ill-founded

Its development, its drawbacks and benefits, and its role in the future of the European Court of Human Rights

Kandidatnummer: 726

Leveringsfrist: 25. April 2014

Antall ord: 17 657





# Table of Content

<b>1</b>	<b>INTRODUCTION.....</b>	<b>1</b>
1.1	The subject of the thesis.....	1
1.2	“Manifestly ill-founded” put in context.....	2
1.3	The scope of the paper .....	3
1.4	The structure of the thesis .....	3
1.5	Sources of law and methodology .....	4
1.5.1	Sources of law .....	4
1.5.2	My methodology .....	4
<b>2</b>	<b>THE EUROPEAN COURT OF HUMAN RIGHT’S OWN METHOD – AND HOW IT CAN AFFECT THE INTERPRETATION AND USE OF “MANIFESTLY ILL-FOUNDED” .....</b>	<b>5</b>
2.1	The use of the Vienna Convention’s rules on interpretation .....	5
2.1.1	Interpretation of “manifestly ill-founded” based on article 31(1) .....	5
2.2	The “living instrument” doctrine .....	8
2.2.1	Its effect on the use of “manifest ill-founded” .....	9
2.3	The effectiveness doctrine .....	9
2.3.1	Its effect on the use of “manifestly ill-founded” .....	10
2.4	Object and purpose .....	10
2.4.1	Its effect on the use of “manifestly ill-founded” .....	11
2.5	The margin of appreciation .....	11
2.5.1	Its effect on the use of “manifestly ill-founded” .....	11
<b>3</b>	<b>THE TRAVAUX PRÉPARATOIRES.....</b>	<b>12</b>
3.1	Introduction.....	12
3.2	The main issues of the makers of the Convention .....	12
3.3	The Commission .....	13
3.4	“Manifestly ill-founded” .....	14
3.5	What was it meant to be from the start?.....	15
<b>4</b>	<b>ITS DEVELOPMENT - THE CASE LAW.....</b>	<b>16</b>

4.1	The early case law .....	16
4.1.1	General overview – up until the end of 1969 .....	16
4.1.2	Iversen case.....	18
4.2	The further development of the criterion – 1970s, 1980s and up until November of 1998.....	20
4.2.1	1970s and 1980s – some general remarks .....	20
4.2.2	Powell and Rayner Report.....	22
4.2.3	The 1990s – up until November of 1998.....	23
4.3	The newest case law – from 1998 until now.....	24
4.3.1	Structural changes to the Court – Protocol 11 .....	24
4.3.2	Protocol 14 – the addition of a new admissibility criterion.....	26
<b>5</b>	<b>A CLOSER LOOK AT SOME OF THE CRITICISM, AND A LOOK INTO THE FUTURE .....</b>	<b>31</b>
5.1	Introduction.....	31
5.2	The admissibility process’ blessing and curse .....	31
5.3	Problems relating to the decisions taken by the single judge formation and committees without further examination.....	33
5.4	Has the criterion been interpreted too widely? .....	36
5.4.1	How “manifestly ill-founded” has been used .....	36
5.4.2	A way of dealing with all the applications .....	38
5.4.3	Conclusion .....	39
5.5	Reforms – the future .....	40
5.5.1	Can significant disadvantage lessen the need for “manifestly ill-founded” and make its interpretation stricter? .....	40
5.5.2	The further reform work .....	41
<b>6</b>	<b>CONCLUSIONS – THE FUTURE OF THE CRITERION .....</b>	<b>45</b>
<b>7</b>	<b>BIBLIOGRAPHY .....</b>	<b>47</b>
7.1	Case law .....	47
7.1.1	Judgements – European Court of Human Rights .....	47
7.1.2	Decisions – European Commission of Human Rights/European Court of Human Rights .....	47

7.1.3	Human Rights Committee decisions .....	49
7.2	Literature .....	50
7.2.1	Articles .....	50
7.2.2	Books .....	50
7.3	International treaties.....	51
7.4	Other documents related to the European Court of Human Rights and the Council of Europe .....	51
7.4.1	Declarations .....	51
7.4.2	Documents from the European Court of Human Rights/Council of Europe....	52
7.5	Various other sources.....	53
7.5.1	Other online documents.....	53
7.5.2	Dictionaries.....	53



# 1 Introduction

## 1.1 The subject of the thesis

“The Court shall declare inadmissible any individual application (...) if it considers that (...) the application is (...) manifestly ill-founded”.<sup>1</sup> That means that your application to the European Court of Human Rights (the Court) cannot be manifestly ill-founded if it is to reach the Court. “Manifestly ill-founded” is the most used admissibility criterion in the European Convention on Human Rights (the Convention or ECHR). In 2011, 62% of the applications that were deemed inadmissible fell under the “manifestly ill-founded” criterion, illustrating its widespread use.<sup>2</sup> An illustration of its complexity is given by the Court itself in its Admissibility Handbook, where it divides it into four different categories of claims that fall within it.<sup>3</sup> “Manifestly ill-founded” is the criterion which is the hardest to pass, because it evaluates the merits of your case. Not only does your case have to fulfil the procedural and jurisdictional criteria, your claim also has to be well-founded.

The criterion has received much criticism over the years. Some mean that the criterion has been interpreted too widely<sup>4</sup> and that it has deviated too far from its ordinary meaning.<sup>5</sup> Others mean that it has become a dustbin where the Court throws away all the cases that it does not have the time to deal with.<sup>6</sup> In the last decades the Court has had an enormous caseload, making it necessary to have an effective way of weeding out the inadmissible cases. But is the use of the criterion “manifestly ill-founded” really suited to be used as much as it is? Has it been interpreted too widely? Has it deviated too far from the ordinary meaning of the words or what the founders of the Convention meant for it to be? Recently there has risen new criticism about the use of it too, because the single judge formation and committees of three judges are now using it to reject cases with no further examination.<sup>7</sup> All that the

---

<sup>1</sup> ECHR art. 35 (3)(a)

<sup>2</sup> European Court of Human Rights' Online admissibility checklist

<sup>3</sup> Practical Guide on Admissibility Criteria, 2011, pp. 68-74

<sup>4</sup> See for example Harris (1995) p. 627

<sup>5</sup> Dijk (1998) p. 165, Lorenzen (2011) p. 1125

<sup>6</sup> Cameron (1998) p. 47

<sup>7</sup> Keller (2010) especially p. 1046-1047 and Gerhards (2014)

applicant gets is a short letter saying that the application is inadmissible. This raises issues of transparency. Currently, there is also talk of even more reforms to make the Court more efficient and dealing with only the cases that pose serious questions about human rights.<sup>8</sup> This paper will look at the interpretation and use of “manifestly ill-founded”, and by doing so also look at some of its drawbacks and benefits. It will also look at the recent and current reform work, and see what kind of effect that has or can have on the criterion.

## **1.2 “Manifestly ill-founded” put in context**

As said earlier, the “manifestly ill-founded” criterion is part of the admissibility process of the European Court of Human Rights. There are three main categories of admissibility criteria, namely jurisdictional criteria, procedural criteria and criteria concerning the merits. The jurisdictional criteria can be divided into four categories: *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*.<sup>9</sup> The procedural grounds of admissibility are the six month limit, the abuse of the right to petition, the exhaustion of domestic remedies, anonymous complaints, redundant complaints (same as an earlier complaint) and applications already submitted to another international body.<sup>10</sup> The grounds concerning the merits of the cases are the “manifestly ill-founded” criterion and the new “significant disadvantage” criterion.<sup>11</sup> The significant disadvantage criterion gives the Court the ability to deem inadmissible cases that do not place the applicant at a significant disadvantage.

The procedural and jurisdictional grounds are mostly unproblematic, while the grounds concerning the merits can often warrant a need for further submissions from the parties in order to decide if the case is admissible or not. Only individual complaints can be deemed inadmissible by the “manifestly ill-founded” criterion.

---

<sup>8</sup> See Interlaken Declaration, Izmir Declaration and Brighton Declaration

<sup>9</sup> For further explanation of this see the Practical Guide on Admissibility pp. 34-68

<sup>10</sup> ECHR art. 35

<sup>11</sup> ECHR art. 35(3)(b)



### **1.3 The scope of the paper**

I chose to look at this particular criterion because it is used a lot by the Court. A search in HUDOC (the Court's online case law database) gives you more than 10.000 cases that are deemed inadmissible because the claim is manifestly ill-founded. Though, the actual number is a lot higher if one takes into account the cases that are deemed inadmissible by the single judge formation and committees without further examination in the recent years. It is also a very complex and interesting criterion. Partly because the interpretation of it has been criticized, but also because of the array of different cases that are deemed inadmissible with it. This paper will present some of the central and most important features and issues regarding "manifestly ill-founded, but it is by no means an exhaustive presentation of it. A lot of the observations will rely on the case law regarding the criterion, but due to the huge number of cases, this paper will not present a thorough analysis of the use of the criterion. That would not fit within the limits of this paper. Rather, this paper aims at giving an overview of how the criterion has been used and developed over the years, and using that as a background for the further reflections regarding some of its benefits, drawbacks and what the future holds for it.

### **1.4 The structure of the thesis**

This paper is divided into four main parts. The first part will give a short overview of the Court's method and see how that can affect the use of the criterion. This is useful because the Court has to a large degree developed its own method and some of it can be problematic together with "manifestly ill-founded" and some of it can justify the wide interpretation of "manifestly ill-founded". The second part will look at the travaux préparatoires of the Convention in order to establish what the criterion was meant to be, this will be the basis for my further reflections regarding its development and the criticism it has received. The third part will look at the development of the criterion through a look at the case law concerning it, starting at the beginning and following it until the present. This part will touch upon some of the central issues and aspects of "manifestly ill-founded", but the most central issues are expanded on in part four of the paper because they are better looked at after the complete development of the criterion is looked at. The fourth main part will look at some of the central issues, benefits and drawbacks and also look at how the future and the current reform work can affect the use of the criterion.

## 1.5 Sources of law and methodology

### 1.5.1 Sources of law

The sources of law used in this paper are mainly the European Convention on Human Rights (ECHR) and its Protocols. The Vienna Convention on the Law of Treaties (Vienna Convention) will be used for interpretation. The case law of the former Commission and the Court will also be heavily relied on, as this shows how the criterion has developed. The Court usually follows its own jurisprudence, and both the former Commission and the Court has from a very early stage referred back to previous decisions and judgements when they decide cases.<sup>12</sup> The preparatory work to the European Convention, or the travaux préparatoires as they are most often referred to in international law, will also be studied. They are not very often used as a means of interpretation in international law; their value is mainly historical, which is also what they will have in this paper.

### 1.5.2 My methodology

As said before this paper is by no means a complete study of the case law regarding the use of “manifestly ill-founded”. This paper aims at giving a general overview of the development of the criterion as a basis for some further reflections and discussions regarding it. Therefore, a selection of decisions has been studied. From the 1960s, several decisions from each year have been studied. From the 1970-2010, in order to get an overview, one decision from each year has been studied. From after 2010 I have studied one case from each month, and also some more randomly chosen ones regarding the use of “significant disadvantage”. Literature is used to point out some central issues, but the discussions in this paper will for a large part rely on the case law. Other reports and documents from the Court, the Council of Europe and other research groups have also been used to highlight some of the issues that this paper discusses.

---

<sup>12</sup> For early examples of this see *Matznetter v. Austria* (judgment) and *H.G. and W.G. v. the Federal Republic Of Germany* (1964), no. 2294/64 (decision)

## 2 The European Court of Human Right's own method – and how it can affect the interpretation and use of “manifestly ill-founded”

The Court has to a large degree developed its own interpretation rules and styles. There is not room for a through presentation of the Court's method in this paper, but this part will give a short overview of some of the Court's most central method. This will then be used to see how it can either be problematic together with the wide use of the criterion or how it can justify the wide use of the criterion. It is always useful to keep in mind the Court's method when working with its case law since it is so distinct and well-established.

### 2.1 The use of the Vienna Convention's rules on interpretation

In *Golder*<sup>13</sup> the Court said that it should be guided by the interpretation rules found in articles 31-33 in the Vienna Convention.<sup>14</sup> In more recent times, this has been confirmed in *Johnston and Others*<sup>15</sup>, *Bankovic*,<sup>16</sup> *Mamakulov*<sup>17</sup> and *Saadi*.<sup>18</sup> In *Saadi* the Court said that it “will, as always, be guided by Articles 31 to 33” of the Vienna Convention,<sup>19</sup> so even if the Court does not explicitly state that they use these rules, one can assume that the Court uses the rules more than they implicitly expresses. But, on the other hand, in some cases, the interpretation is mostly guided by the Court's own method, so the Court does not follow this all the time.

#### 2.1.1 Interpretation of “manifestly ill-founded” based on article 31(1)

This section will provide a quick interpretation to serve as a basis for an answer to the criticism that says that the criterion is interpreted too far away from its ordinary meaning. Article 31(1) of the Vienna Convention states: “A treaty shall be interpreted in good faith in

---

<sup>13</sup> *Golder v. the United Kingdom*

<sup>14</sup> *Ibid.* para. 29

<sup>15</sup> *Johnston and Others v. Ireland*, para. 51

<sup>16</sup> *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) (2001) no. 52207/99, para. 55

<sup>17</sup> *Mamatkulov and Askarov v. Turkey*, para. 111

<sup>18</sup> *Saadi v. the United Kingdom*, para. 61

<sup>19</sup> *Ibid.*

*accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”*

#### 2.1.1.1 Ordinary meaning

One can often find the ordinary meaning of a word in a dictionary. Some words or terms might have acquired a different meaning than the ones found in dictionaries, for example, because the terms or words are used in a certain way in some areas of life. Treaties and laws sometimes have definitions of words and terms. There is no definition of “manifestly ill-founded” in ECHR, which means that the dictionary definition will probably be the ordinary meaning of the word in this situation.

The Oxford Advanced Learner’s Dictionary<sup>20</sup> defines ill-founded as “*not based on fact or truth*”. It defines the adjective “manifest” as “*easy to see or understand*”. It lists “clear” as a synonym. Oxford Dictionary of English defines “ill-founded” as “*not based on fact or reliable evidence*”.<sup>21</sup> The same dictionary defines the adjective form of “manifest” as “*clear or obvious to the eye or mind*”. Merriam-Webster online dictionary defines “manifest” as “*easily understood or recognized by the mind*”.<sup>22</sup>

All the dictionaries say that “manifestly” means that it is obvious, clear or easy to see or understand. They say that “ill-founded” means that it is not based on truth, fact or reliable evidence. If we apply this together, it means that cases can be deemed manifestly ill-founded if it is clear or easy for the Court to see that the case is not based on facts, truth or reliable evidence.

#### 2.1.1.2 Context

One must also consider the context the words or terms are in. The context could mean the immediate context as in the rest of the sentence or the paragraph. And it can also mean the context of the whole treaty. The immediate context is of more criteria that can make a case inadmissible. This means that “manifestly ill-founded” is one of several criteria that can make

---

<sup>20</sup> Oxford Advanced Learner’s Dictionary, 2010

<sup>21</sup> <http://www.oxforddictionaries.com/>

<sup>22</sup> <http://www.merriam-webster.com/dictionary/manifest>

one's case inadmissible. Another context would be that "manifestly ill-founded" is an admissibility ground based on the merits of the case. With the Protocol 14 in force, there is now another admissibility criterion based on the merits, which in short says that you cannot get your case to the Court if you have not suffered a significant disadvantage.<sup>23</sup> Those are the two admissibility grounds that concern the merits of the case. That means that when determining the admissibility with these two grounds, the merits need to be examined closer. The "significant disadvantage" criterion is part of the Court's recent efforts to try to minimize the amounts of cases that they receive and the amount of cases that will be deemed admissible. The new criterion means that even though your case is not manifestly ill-founded it can still be deemed inadmissible if you have not suffered a significant disadvantage. The new criterion is expected to enable a "more rapid disposal of unmeritorious cases".<sup>24</sup> Looking at the context between "manifestly ill-founded" and "significant disadvantage" and the hopes for the new criterion, it could make the use of "manifestly ill-founded" less needed and perhaps even make the interpretation of "manifestly ill-founded" a bit stricter since there now is another criterion that concerns the merits. Another context that is useful to look at is the wider context of the whole Convention. The European Court of Human Rights is subsidiary to the national systems; it is not a further chance of appeal. Therefore, they need means to weed out the cases that are not based on something substantial. The criterion "manifestly ill-founded" could in light of this context be interpreted a bit wider than the strict ordinary meaning of the words. The context of the admissibility process is also something to take into consideration. Since this criterion concerns the merits of the cases, it means that the merits need to be examined, and all relevant things need to be clarified. That means that it cannot always be clear from the first look at the application that the case is ill-founded, sometimes the application is so complex that it needs to be examined further before it becomes obvious that the application is ill-founded. This context is an important one, if the admissibility process is to function properly; the cases need to be examined first. This means that the ordinary meaning of it has to be seen in context with the admissibility process and that it might not be apparent from the very first look at the application that the case is ill-founded. These contexts mean that a wider interpretation of the criterion could be justified and even

---

<sup>23</sup> ECHR art. 35(3)(b)

<sup>24</sup> Explanatory Report to Protocol No. 14, para. 79

required, but the addition of the new criterion might mean that the interpretation of it can become stricter again.

#### 2.1.1.3 Object and purpose

The object of the European Convention of Human Rights is to stipulate out the rights that all the people within its jurisdiction are entitled to.<sup>25</sup> And, even further to make available means of enforcing them or seeking tort, if they are breached, on an international level.<sup>26</sup> The purpose of the treaty is to secure these rights for the people within its jurisdiction. This can then be looked at from two points of views. The first one being that the Court is subsidiary to the national systems, and it should only deal with claims that the applicants cannot resolve inside their own countries. Seeing as the cases that are manifestly ill-founded are resolved in the home State of the applicant, they do not deserve the Court's attention. The second point of view would be that the Convention and the Court are to provide a wide and good protection of the human rights of the people within its jurisdiction. If too many cases are deemed inadmissible because the criterion has been interpreted too widely, this would go against the object and purpose of the Convention. So the object and purpose of the Convention speaks for a stricter interpretation.

#### 2.1.1.4 Conclusion

All in all, an interpretation based on the first paragraph of article 31 should mean that the criterion should be interpreted not too far away from its ordinary meaning, meaning that it should be obvious or easy to see that the application is ill-founded. But the context of the admissibility process means that it can also first be apparent that the application is manifestly ill-founded after the merits of the case are examined.

## 2.2 The “living instrument” doctrine

The Convention is often referred to as a “living instrument” by the Court. This doctrine was established quite early, in *Tyrer*.<sup>27</sup> In that case the Court stated that “*(t)he Court must also*

---

<sup>25</sup> ECHR, art. 1

<sup>26</sup> ECHR, Section 2

<sup>27</sup> *Tyrer v. United Kingdom*

*recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions.*”<sup>28</sup> In a later case, the Court also established that the “living instrument” doctrine could be used on procedural provisions too.<sup>29</sup> The doctrine is also sometimes described as a “*dynamic and evaluative approach*”.<sup>30</sup>

This doctrine allows the Court to interpret the Convention in light of the society around it at any given time. Societies evolve over time; it was impossible for the makers of the Convention to predict what the future would hold, but with this doctrine the Convention can keep up with time. The doctrine has been used in a lot of different situations since its establishment, ranging from violation of article 8 regarding rights of post-op transsexuals;<sup>31</sup> violation of the fair hearing principle in article 6;<sup>32</sup> to treatment that earlier had been classified as inhuman and degrading treatment but now amounted to torture under article 3.<sup>33</sup>

### **2.2.1 Its effect on the use of “manifest ill-founded”**

The fact that more countries became parties to the Convention in the last two decades means that the amount of applications increased. A dynamic interpretation of the criterion can mean that in order for the criterion to be able to keep up with the new and changing conditions, it needs to be widened even further to prevent to Court from being over-flooded with applications. A dynamic approach can justify a wider interpretation of the criterion.

## **2.3 The effectiveness doctrine**

Another important doctrine is the effectiveness doctrine. This principle was established in *Marckx*,<sup>34</sup> where there is talk of positive obligations under article 8 ensuring effective respect

---

<sup>28</sup> Ibid., para. 31

<sup>29</sup> *Loizidou v. Turkey (preliminary objections)*, para. 71

<sup>30</sup> *Stafford v. United Kingdom*

<sup>31</sup> *Christine Goodwin v. United Kingdom*

<sup>32</sup> *Micallef v. Malta*

<sup>33</sup> *Selmouni v. France*

<sup>34</sup> *Marckx v. Belgium*

for family life.<sup>35</sup> This doctrine is also widely used by the Court, and it has been expressed clearer since its establishment. In *Airey*,<sup>36</sup> the Court said that the Convention is “*intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective*”.<sup>37</sup> In essence, this principle ensures that the rights in the Convention are effectively enforced. The Court interprets the provisions so that the rights are effective and practical in the situations in the cases, not in a way that make them empty and void of any real content.

### 2.3.1 Its effect on the use of “manifestly ill-founded”

This can be a bit problematic in connection with the use of the “manifestly ill-founded” criterion. A wide interpretation of “manifestly ill-founded” can result in a too strict evaluation of what cases get to be examined by the Court, and that can perhaps result in the rights becoming theoretical and illusory for the people who cannot get their cases adjudicated by the Court. This is not the case in cases that are obviously manifestly ill-founded, because the applicants there have no real claims. But it can be the case in cases where there is more doubt as to whether or not the claim is manifestly ill-founded or not. A wide interpretation of “manifestly ill-founded” can be contradictory to the effectiveness doctrine in some instances.

## 2.4 Object and purpose

Another important factor in the interpretation by the Court is the object and purpose. Object and purpose of the ECHR is to afford wide human rights protection for the persons within its jurisdiction. In *Golder*,<sup>38</sup> the Court also said that one of the objects and purposes of the ECHR is to protect the rule of law.<sup>39</sup> In *Wemhoff*<sup>40</sup> the Court said that when interpreting “*it is also necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty*”.<sup>41</sup> The Court has through the years provided a wide protection of the human rights in the Convention, especially through the dynamic interpretation. Even

---

<sup>35</sup> Ibid. para. 31

<sup>36</sup> *Airey v. Ireland*

<sup>37</sup> Ibid. para 24

<sup>38</sup> *Golder v United Kingdom*

<sup>39</sup> Ibid. para. 34

<sup>40</sup> *Wemhoff v Germany*

<sup>41</sup> Ibid. para. 8



though the use of object and purpose is not mentioned explicitly in the judgments, the wide human rights protection offered and the protection of the rule of law is a testament to the great emphasis the Court puts on interpreting the provisions in accordance with the object and purpose of the Convention.

#### **2.4.1 Its effect on the use of “manifestly ill-founded”**

A wide protection of human rights can be problematic together with a wide interpretation of the “manifestly ill-founded” criterion. A wide interpretation of the “manifestly ill-founded” criterion can limit the width of the protection of human rights. A wide interpretation of “manifestly ill-founded” means that fewer cases get a chance to be looked at by the Court which again lessens the human rights protection. If one used the object and purpose when interpreting the criterion, it probably means that when in doubt, at least when there is strong doubt, one should strive to offer the best human rights protection and let the Court examine the case. A wide interpretation of “manifestly ill-founded” is somewhat contradictory to the object and purpose of the Convention.

### **2.5 The margin of appreciation**

The margin of appreciation is another one of the doctrines the Court uses a lot. It was first established by the Court in the *Handyside*<sup>42</sup> case. Its core element is that the State Parties are left a certain margin of appreciation as to how they will interpret and implement the Convention rights. This is especially true for rights such as article 10, which the *Handyside* case concerned, and other rights such as those in articles 8 and 9. The *Handyside* case concerned censorship of a book used in schools. The Court came to the conclusion that it was very much up to the State Parties to determine if the book came within the bounds of the exception in article 10(2). This has later been used in a large number of judgments and decisions.

#### **2.5.1 Its effect on the use of “manifestly ill-founded”**

The use of the margin of appreciation has in many cases resulted in the application being deemed manifestly ill-founded and inadmissible. Since the margin of appreciation leaves

---

<sup>42</sup> *Handyside v. the United Kingdom*, para. 48-49

room for the State Parties to themselves decide on certain things regarding the interpretation and implementation of the Convention rights, and if the claimed violation falls within their margin of appreciation, the case can be manifestly ill-founded. Thus, it means that the use of the margin of appreciation can legitimise the use of “manifestly ill-founded”, especially in cases where it is doubtful whether the claim is manifestly ill-founded or not.

## **3 The travaux préparatoires**

### **3.1 Introduction**

In this paper the travaux préparatoires will be used to illustrate the intentions of the makers of the convention, to find out what they meant by “manifestly ill-founded”. The travaux préparatoires are not an important source of interpretation in international law, and they will only be used to illustrate what the criterion was originally meant to be.

The Commission that is talked about in the travaux préparatoires is no longer in existence, it was replaced by admissibility decisions by the Court itself in 1998 when Protocol 11 came into force.<sup>43</sup> The travaux préparatoires do speak of the Commission when they talk about the admissibility process, so naturally the Commission will be spoken of in this part. This is a look at the history of the Convention, the starting point. The Commission was the admissibility mechanism that the makers of the Convention envisioned, and the Commission certainly played an important role through the years.

### **3.2 The main issues of the makers of the Convention**

According to the travaux préparatoires, the main concern was the potential flooding of the Court by an enormous amount of cases that were not necessarily well-founded.<sup>44</sup> Another big concern was the actual construction of a court. Some people were worried that the Court

---

<sup>43</sup> Explanatory Report to Protocol no. 11 chapter IV, and articles 19 of the ECHR as it was amended by Protocol 11

<sup>44</sup> Collected edition of the "travaux préparatoires" of the European Convention on Human Rights (Coll. Ed.), I, p. 122

would infringe too much on countries' sovereignty and meddle in the internal affairs of countries.<sup>45</sup> The concerns about meddling in the internal affairs were mostly remedied by a provision that made the Court available only for the people who had exhausted the judicial system in their own country before filing a complaint with the Court.<sup>46</sup> Others took issue with letting people enter individual petitions, fearing that many people would abuse the right of petition.<sup>47</sup>

### 3.3 The Commission

The makers of the Convention envisaged a commission that would act as a screening mechanism, making sure that the Court would not get over-flooded with cases and to weed out the cases that did not comply with the admissibility criteria. The Commission's functions were explained at the Consultative Assembly of the Council of Europe's plenary sitting of August 19<sup>th</sup> 1949. Here Mr. Teitgen said:

This Commission could form a kind of barrier – a practical necessity well known to all jurists – which would weed out frivolous or mischievous petitions. ./.. Petitions would be addressed to the Commission which would “screen” them, retaining only those worthy of serious consideration. These serious petitions would be investigated by the Court (...).<sup>48</sup>

The Commission was several places referred to as a “sieve” or a “filter”.<sup>49</sup> People seemed to agree on the need to have a mechanism that could weed out the cases that were not worthy of an examination by the Court. And a lot of them were concerned that the Court would be over-flooded with cases, so the mechanism for weeding out unworthy cases had to be an effective one. Sir David Maxwell-Fyfe said in an answer to the criticism about the flooding of the Court that the Commission would be a sieve or a filter that would stop the Court from being over-flooded. It would be up to the Commission to decide on which cases that would go through to the Court.<sup>50</sup> Several places in the travaux préparatoires it is said that the

---

<sup>45</sup> See for example Coll. Ed., II, p. 34 and 36

<sup>46</sup> Ibid. and Mr. Domínguez's opinion found in Coll. Ed., I, p. 74

<sup>47</sup> Coll. Ed., II, p. 232

<sup>48</sup> Coll. Ed., I p. 48

<sup>49</sup> Coll. Ed., I p. 122, Coll. Ed., II, p. 196

<sup>50</sup> Coll. Ed., I, p. 122

Commission would only let through to the Court cases that after an enquiry by the Commission are found to be well-founded or at least appear to be well-founded.<sup>51</sup> A fear that the Commission itself would be over-flooded with cases was also expressed, but that was answered by saying that the Commission could easily make up its own provisions about how to deal with such cases without “*needless loss of time*”.<sup>52</sup> It seems as though the majority were happy with the Commission and thought that it would be able to function well as a filter for the Court. According to the travaux préparatoires, the makers of the Convention wanted the Commission to look at the cases and rather quickly decide on the admissibility. They wanted it to be an effective filter, weeding out cases that were undeserving of the Court’s attention.

### 3.4 “Manifestly ill-founded”

The term “manifestly ill-founded” was first used in a draft to an article 14 by the Legal Committee to the Consultative Assembly.<sup>53</sup> After that, several versions of the criterion were mentioned, among others “obviously ill-founded”<sup>54</sup> and there were also mentions of “receivable”.<sup>55</sup> The term is not explained further, but the context it is in when reading the travaux préparatoires suggests that they did not mean for the term to mean something more than its ordinary meaning. They did change it with “obviously” a few times, and that suggests that the meaning of “manifestly” should be the ordinary meaning of the word. In a plenary sitting by the Legal Committee to the Consultative Assembly it was said that:

The Commission of Investigation would decide on its receivability. It would thus verify if, presuming the facts are correct, these facts are such as to impinge on one of the provisions of the Convention, which the States have undertaken to respect. It will also confirm if the request is accompanied by documents or other evidence; and, if any of these conditions was not fulfilled, the request would be rejected as ill-founded and irregular (...).<sup>56</sup>

---

<sup>51</sup> Coll. Ed., I p. 282, Coll. Ed., II. p. 152, Coll. Ed., II. p. 196, Coll. Ed., II. p. 214, Coll. Ed., II. p. 232

<sup>52</sup> Coll. Ed., IV p. 38

<sup>53</sup> Coll. Ed., I p. 232

<sup>54</sup> Coll. Ed., I p.282 and 284

<sup>55</sup> Ibid.

<sup>56</sup> Coll. Ed., II, p. 152

This makes it look like the ill-founded part reflects back to the evidence claim. If the claim is not backed up by evidence, it will be determined to be manifestly ill-founded. It also goes back to the fact that there has to be a violation of a right guaranteed by the Convention. If there is no apparent violation of a right in the Convention, the case is manifestly ill-founded.

### **3.5 What was it meant to be from the start?**

There are no signs in the Convention itself or the travaux préparatoires that the makers of the Convention assigned any special meaning to the words “manifestly ill-founded”. However, if we look at the things that are said about the Commission, that might stretch the meaning of “manifestly ill-founded”. The fact that the Commission was a sort of first instance mechanism with the powers to look at the cases in order to decide which cases satisfy the admissibility criteria and which did not, suggests that the “manifestly ill-founded” criterion applies after the merits have been looked at properly, and it could then be clear that the case is ill-founded. The criterion “manifestly ill-founded” is an admissibility criterion based on the merits of the case, so the Commission should look at the merits when they evaluated whether a case was admissible or not. Of course, the work of the Commission was not meant to be as thorough as the work of the Court, the Commission did not have a mandate to act as a proper court, it was only to decide on the admissibility of the cases and to decide which cases needed to be looked at by the Court.

It was said in the travaux préparatoires that the Commission should be able to make this distinction without needless loss of time,<sup>57</sup> meaning that the makers of the Convention did wish for it to be a rather speedy and straightforward process that could weed out cases that were undeserving of the Court’s attention. The “manifestly ill-founded” criterion is a flexible criterion that would allow the Commission to weed out the cases that were not well-founded. Maybe the fear of over-flooding made the interpretation wide from the very beginning? The next chapter of this paper will look at the development of the criterion, from its early days up until the present day, after the “significant disadvantage” criterion came into function.

---

<sup>57</sup> Coll. Ed., IV p. 38

## 4 Its development - the case law

This chapter will look at the case law concerning the criterion. The development through the years will be studied. There will be three main parts, each studying a different period to look at the development of the criterion with different factors playing a role in its use and interpretation.

### 4.1 The early case law

This section will focus on the early case law regarding “manifestly ill-founded”. By early case law I mean the case law up until the end of 1969. I chose to look at the first decade separately in order to establish how it was used when the caseload was low and the case law was scarce.

#### 4.1.1 General overview – up until the end of 1969

The first years the Court did not get many applications, and most of the ones they got were deemed inadmissible. Around 100 cases were deemed inadmissible because they were found to be manifestly ill-founded in this period.<sup>58</sup> The first few years saw very few cases, but the caseload increased slightly in the latter part of the 1960s.<sup>59</sup> Up until 1998 the Commission dealt with the admissibility proceedings, which means that it will be central when dealing with the case law up until 1998.

The first observation is that most cases concerned claimed violations of article 6 of the Convention.<sup>60</sup> Many applications concerned the right to a fair hearing<sup>61</sup> and the right to call witnesses.<sup>62</sup> Some cases had the appearance of being pretty easy to deem manifestly ill-founded,<sup>63</sup> others needed more consideration and interpretation by the Commission.<sup>64</sup> A lot of these cases can probably fall within two of the categories the Court has mentioned in their

---

<sup>58</sup> Based on a search in HUDOC

<sup>59</sup> Ibid.

<sup>60</sup> For example *X. v. Austria* (1961), no. 1127/61, *X. v. the Federal Republic of Germany* (1961), no. 627/59, *X. v. Austria* (1963), no. 1418/62, *X. v. Denmark* (1965), no. 2518/65, *X. v. Sweden* (1967), no. 2358/64,

<sup>61</sup> For example *X. and Y. v. The Federal Republic of Germany* (1962), no. 1013/61

<sup>62</sup> For example *X. v. the Netherlands* (1967), no. 2383/64

<sup>63</sup> For example *X. v. Austria* (1961), no. 913/60

<sup>64</sup> For example *X. v. Austria* (1963), no 1747/62

Admissibility Handbook, namely “fourth instances cases” and cases where the absence of a violation is clear or apparent.<sup>65</sup>

Another observation is that some of the cases are not well-written and lack part of the argumentation that makes one able to fully understand the result,<sup>66</sup> which is a thing that is commented upon in the literature.<sup>67</sup> One example of this that is criticised in the literature is the use of article 8 and its exceptions in the second paragraph.<sup>68</sup> In cases concerning this, the Commission sometimes took a shortcut when it came to the argumentation and just plainly stated that the case fell under the exception in the second paragraph instead of giving a proper reason as to why it fell within that exception.<sup>69</sup> To contrast that, some claim that in some cases the Commission went too far in examining the merits,<sup>70</sup> especially in the first 10 years.<sup>71</sup>

In several cases, the Commission looked at rights and their respective restrictions. Examples range from freedom of expression and respect for correspondence and their restrictions<sup>72</sup> to protection of health and morals in art. 8.<sup>73</sup> They also looked at cases where the question of the length of detention came up. One of those cases is *X. v The Federal Republic of Germany*.<sup>74</sup> In that case the Commission looked at the detention of a man accused of taking part in mass extermination of Jews during World War 2. The applicant had been detained for 19 months pending trial. He claimed a violation of article 5, which among other things, grants people who are charged with a crime the right to either have their case decided on within a reasonable time or be released pending trial. After an evaluation of the circumstances of the case, the Commission came to the conclusion that the length of detention was not unreasonable and declared the case manifestly ill-founded. In that case, the Commission did

---

<sup>65</sup> See Practical Guide on Admissibility, 2011, pp. 68-74 for a more thorough explanation regarding the use of these categories

<sup>66</sup> *X. v. Iceland* (1967), no. 2525/65

<sup>67</sup> Jacobs (1996) pp. 366-367

<sup>68</sup> *Ibid.*, page 367

<sup>69</sup> For example *X. v. Germany* (1967), no. 2279/64

<sup>70</sup> Jacobs (1996) p. 366

<sup>71</sup> Castberg (1971) p. 69

<sup>72</sup> *X. v. the Federal Republic of Germany* (1963), no. 1628/62

<sup>73</sup> *X. v the Federal republic of Germany* (1966), no. 2516/65

<sup>74</sup> *X. v. the Federal Republic of Germany* (1961), no. 920/60

more than just looking at the case and finding it obvious that the detention was not unreasonable. They interpreted the provision of article 5 and then applied it to the circumstances of that case before concluding that the case was manifestly ill-founded. In another case, *X. v. The Germany*,<sup>75</sup> the Commission stated that it “*has the right and indeed the ability to appreciate whether or not interference by a public authority fulfils the conditions laid down in paragraph (2) of the Article*”. Here the Commission said that it could evaluate whether or not there are violations of art. 8(2) of the Convention, which means that it said that it had the power to evaluate the conditions laid down in the Convention up against the circumstances of the cases. This again gives the criterion a wider meaning, it suggests that when deciding on the admissibility of cases, the Commission could and maybe even should do a proper interpretation of the provisions in the Convention and then apply them to the case in question. In *Planki v. Austria*<sup>76</sup> the Commission stated the following about their role in applying the “manifestly ill-founded” criterion:

whereas it follows that at the present stage of the proceedings the task of the Commission is not to determine whether an examination of the case submitted by the Applicant disclose the actual existence of a violation of one of the rights and freedoms guaranteed by the Convention but only to determine whether it includes any possibility of the existence of such a violation<sup>77</sup>

This was probably not always followed; some cases should have been referred to the Court if that which is stated above should be true. It is plain to see that the Commission did apply a wide interpretation of the criterion from the very beginning. The following case is an example of a case where the criterion was interpreted too widely.

#### **4.1.2 Iversen case<sup>78</sup>**

The case concerned a dentist who claimed a violation of article 4 of the Convention, which prohibits forced labour and slavery. He claimed that the Norwegian government had violated article 4 when they had instated him in a position in the northern part of Norway, a place

---

<sup>75</sup> *X. v. the Germany* (1966), no. 2413/65

<sup>76</sup> *Planki v Austria* (1963) nos. 596/59 and 789/60

<sup>77</sup> *Ibid.* p. 23

<sup>78</sup> *I. v. Norway* (1963), no. 1468/62



where he did not wish to work. When he left the position before his contract was up, he got a fine and a prison sentence.<sup>79</sup>

The problematic thing with this case is that the Commission departed from its usual practice by stating the result of the vote and allowing both the majority and minority to express their opinions. Even within the majority of six there were two separate opinions. The minority consisted of four members that did not want to declare the application manifestly ill-founded. Four members of the majority, after trying to find out what forced labour meant, decided that the work required of Iversen did not constitute forced labour and, therefore, that part of the application was manifestly ill-founded. The other two members of the majority meant that the labour fell within the exception in article 4(3)(c), saying that the lack of dentists in the northern part of Norway was a situation that threatened the life and well-being of the community, which also made the application manifestly ill-founded. The minority said that the conditions, such as salary, time-limit and professional facilities, do not exclude the present situation from being forced labour. They also said that the question of applicability of article 4(3)(c) had to be examined closer.

The circumstances in this case are complex, and there had been extensive submissions from both parties. The wealth of different opinions makes it difficult to understand how this case could be deemed inadmissible. In this case, four out of ten persons did not think it was clear or obvious that this case was ill-founded, they thought it deserved a closer examination. It is hard to understand how it can be obvious that it is ill-founded when four out of ten persons did not think that it was so. Can it be said to be “manifestly” with such a marginal dissent?<sup>80</sup> The Commission itself said that the reason for the departure from their normal proceedings considering voting and separate opinions was because of the complexity of the case and the extensive case material. Had this case been declared admissible, the Court would probably not have said that this was forced labour, but it would have had the opportunity to provide a proper interpretation of forced labour. And that would have been a valuable contribution to the jurisprudence of the Court. For that reason, and because of the complexity of the case, I have to say I agree with the minority. There has also been wide criticism about this decision

---

<sup>79</sup> Ibid. for further details surrounding the circumstances

<sup>80</sup> Dijk (1998) p.165, Harris (1995) p. 628

in the literature.<sup>81</sup> The interpretation of the criterion was a bit too wide in this case. Jacobs and White states in one of their books that “*its application of this principle has not always been satisfactory*”<sup>82</sup> when talking about the Commission’s use of the criterion. And they go on to say that the Iversen case is the most obvious example of such a case.<sup>83</sup>

## **4.2 The further development of the criterion – 1970s, 1980s and up until November of 1998.**

The 1970s and 1980s saw a steady increase in cases, which meant that the criterion was more and more used in order to let through just the cases that were worthy of the time of the Court. In the 1990s the caseload increased even more.<sup>84</sup> This could partly be because of the raised awareness of human rights, and maybe that the inhabitants of the contracting States became more aware of their opportunities. But the main reason was an increase in contracting States due to the fall of the Soviet Union and all the newly independent States that resulted in. The fact that a lot of the new member countries were rather new countries that were trying to establish themselves as democratic and independent countries had an impact on the caseload and what kind of cases that came to the Court.

Since it is established that the criterion was interpreted widely from the very beginning, there will not be too much focus on the 1970s and 1980s, but a general overview will be given and also a look at an interesting case report. It is much more interesting to see how the criterion developed in the 1990s along with the huge increase in cases that that decade saw, and the changes of the Court’s structure in the late 1990s.

### **4.2.1 1970s and 1980s – some general remarks**

One of the problems with the early case law was that the Commission’s argumentation was often difficult to follow because they skipped parts of the argumentation which need to be

---

<sup>81</sup> See for example Dijk (1998) pp. 164-165, Jacobs (1996) p. 366, Castberg (1971) pp. 69 and 86-88

<sup>82</sup> Jacobs (1996) p. 366

<sup>83</sup> Ibid.

<sup>84</sup> Based on a search in HUDOC regarding the cases that were manifestly ill-founded in this period

there in order to fully understand how they got to the result.<sup>85</sup> This continued to happen in this period.<sup>86</sup> But, the Commission started to develop a better style of writing the decisions in this period, and started explaining themselves better, as well.<sup>87</sup> The Commission also started referring more to the case law of the Court. In the 1960s, there is hard to find many references to the Court's case law. This can of course be explained partly with the fact that there wasn't much case law from the Court in the 1960s. The Commission based their decisions mainly on their previous decisions, making up their own case law regarding the use of the criterion, almost separating themselves completely from the Court. In the 1970s and especially in the 1980s the Commission referred much more to the Court's case law when determining the admissibility of the applications. There are quite a few cases that are very well-written and well-explained and where the Commission used the arguments of the Court. An example of these cases is *Kiss v United Kingdom*.<sup>88</sup> Here the Commission dealt with an application concerning disciplinary punishment in prison and if the applicant had a fair hearing or not. In reaching the conclusion that a part of the application is manifestly ill-founded the Commission used the criteria from a case from the Court to look at how one determines if disciplinary action falls under the right to a fair hearing in article 6. This decision is a lot easier to understand. The problem with the wide interpretation lessens when the Commission referred to the Court's case law and properly justified why they found the cases to be manifestly ill-founded. It is then easier for the applicant to understand the result. It is important that people understand why their cases were rejected; it is a sign of a well-functioning judicial system. Another positive thing with the admissibility decisions being better explained is that it makes it easier for the people who consider applying to the Court to evaluate their case's admissibility. That again could prevent people from sending cases that are clearly manifestly ill-founded.

But there are also cases which should have been deemed admissible, cases that deserved a full examination by the Court because they are complex or pose serious questions of interpretation.<sup>89</sup> *McFeeley et al. v. the United Kingdom*<sup>90</sup> and *Council of Civil Service Unions*

---

<sup>85</sup> Jacobs (1996) pp. 365-366

<sup>86</sup> For example *X. v The United Kingdom* (1970), no. 3898/68 and *S. v. Austria* (1989), no. 12592/86

<sup>87</sup> For example *Lawlor v. the United Kingdom* (1988), no. 12763/87 and *X. v. the United Kingdom* (1974), no. 5270/72

<sup>88</sup> *Kiss v United Kingdom* (1976), no. 6224/73

<sup>89</sup> Harris (1995) p. 627

*et al. v. the United Kingdom*<sup>91</sup> are examples of such cases. The first case concerns a complex case where even the Commission expressed its concern regarding the behaviour of the State,<sup>92</sup> but it eventually decided that the claim was manifestly ill-founded. The latter case concerned the interpretation of “lawful” within the meaning of the second sentence of article 11(2) which there had not been a proper interpretation of earlier. It is said about them and some other cases that they are cases that were deemed manifestly ill-founded because the Commission did not think they would survive the scrutiny of the Court.<sup>93</sup>

#### **4.2.2 Powell and Rayner Report<sup>94</sup>**

The circumstances of this case are not important for this paper, the interesting thing here is what the Commission said in this report regarding the use of the criterion “manifestly ill-founded”. In paragraph 59 of the Report, the Commission spoke about the criterion on a more general note. It was said here that it was clear from the case law of the Commission that the meaning of “manifestly ill-founded” goes beyond what the literal meaning of the word “manifestly” would suggest. In the same paragraph, the Commission further went on to explain how it used the criterion. If, at an early stage in the proceedings, a *prima facie* issue arises, the Commission would often seek further submission from both parties regarding both admissibility and merits. After a full examination of the facts and the issues of the case, it could become clear that the case is not well-founded, and the Commission could then declare the case manifestly ill-founded and inadmissible.<sup>95</sup> The Commission summarized the inadmissible decision in such cases as follows: “*after full information has been provided by both parties, without the need of further formal investigation, it has now become manifest that the claim of a breach of the Convention is unfounded.*”<sup>96</sup>

That is how the Commission had developed and used the criterion. The criterion has to be understood in context with the functioning of the admissibility process. From the travaux

---

<sup>90</sup> *McFeeley et al. v. the United Kingdom* (1980), no. 8317/78

<sup>91</sup> *Council of Civil Service Unions et al. v. the United Kingdom* (1987), no 11603/85

<sup>92</sup> *McFeeley et al. v. the United Kingdom* (1980), no. 8317/78, para. 64

<sup>93</sup> Harris (1995) p. 627

<sup>94</sup> *Powell and Rayner v. the United Kingdom* (1989), no. 9310/81

<sup>95</sup> Ibid. para 59

<sup>96</sup> Ibid.

préparatoires it was rather clear that the makers of the Convention did wish for the admissibility process to be strict and thorough.<sup>97</sup> This means that the criterion can be applied in two different ways. It can be used in the way that is most consistent with the literary meaning of the word “manifest”, namely that it is clear from the application that it is manifestly ill-founded. Cases can also at first suggest that there might be a violation of the Convention so that both parties are invited to come with further submissions. But then, after a full examination of the merits it becomes clear that there are no violations of the Convention. Some cases can be quite complex, and that warrants a closer look at the merits before it is possible to make a qualified decision on the admissibility of the case. How the Commission said it used the criterion in the report has been criticised in the literature, some say it is “*difficult to accept as a correct interpretation and application*”.<sup>98</sup>

#### **4.2.3 The 1990s – up until November of 1998**

During the 1990s, the Convention makers’ fear about the Court being over-flooded became a reality.<sup>99</sup> Up until this point the caseload had been manageable, partly thanks to the opportunity to deem cases inadmissible with the “manifestly ill-founded” criterion. Now the Commission and the Court were not able to keep up with the ever increasing amount of applications.<sup>100</sup> This resulted in huge structural changes with the Court going from being a part-time Court to being a full-time Court. It also meant that the Commission saw its end; in 1998 it was replaced by committees of judges from the Court.<sup>101</sup> This part will focus on how the criterion developed up until the structural change in 1998.

By now the Commission seemed more integrated with the Court’s case law and their decisions were very well-written and well-explained.<sup>102</sup> The wide interpretation which had been established from the beginning really came in handy now that the Commission deemed more applications than ever inadmissible. An example of a very well argued decision is

---

<sup>97</sup> See the chapter about the travaux préparatoires

<sup>98</sup> Dijk (1998) p.165

<sup>99</sup> Explanatory Report to Protocol no. 11, para. 19-21

<sup>100</sup> Ibid. para 21

<sup>101</sup> Ibid. chapter IV

<sup>102</sup> For example *Hjost-Lukkonen v. Sweden* (1993), no. 18262/91 and *C.C. v. Switzerland* (1992), no. 16247/90

*Stallarholmens Plåtslageri o Ventilation Handelsbolag v. Sweden*.<sup>103</sup> The Commission argues this very well and refers to the Court's jurisprudence in order to come to the conclusion that the case is manifestly ill-founded and inadmissible. This case represents how the Commission wrote decisions in its final years.

The criterion was used a lot during this period.<sup>104</sup> Its wide interpretation and the fact that the criterion is pretty flexible made the Commission able to use this to try to deal with all the incoming applications. The criterion evolved together with the increasing caseload and the different cases it was applied to.

### **4.3 The newest case law – from 1998 until now**

This period is naturally split into two parts because of the changes that happened in 1998 with Protocol 11, and the addition of a new admissibility criterion concerning the merits in 2010 with Protocol 14.

#### **4.3.1 Structural changes to the Court – Protocol 11**

In 1998, the Court became completely transformed by Protocol 11. The former Court was replaced by a permanent Court, and the Commission was shut down.<sup>105</sup> The admissibility process where from then handed over to the judges of the Court, sitting in committees of three. According to article 28 as it was established by Protocol 11, committees of three judges could, if they were unanimous, decide on the admissibility if the case did not need any further examination. Those cases that fall within this category are applications that fall under the stricter interpretation of “manifestly ill-founded”, namely the cases where it is easy to see from the start that the applications are ill-founded. The applications that were not deemed inadmissible by a Committee, were looked at by a Chamber or even the Grand Chamber.<sup>106</sup> These applications are the ones that fall into the broader interpretation of the criterion, the ones that require a thorough examination of the merits in order to establish that the application

---

<sup>103</sup> *Stallarholmens Plåtslageri o Ventilation Handelsbolag v. Sweden* (1990), no. 12733/87

<sup>104</sup> A quick search in HUDOC comes up with more than 2000 decisions

<sup>105</sup> Explanatory Report to Protocol no. 11 chapter IV, and article 19 of the ECHR as it was amended by Protocol 11

<sup>106</sup> According to articles 29 and 30 as they were established by Protocol 11.

is manifestly ill-founded. This chapter will look at the decisions that are from Chambers or the Grand Chamber, seeing as those are the cases that are published.

#### 4.3.1.1 Some general remarks about the development of the criterion after 1998

When reading the newer decisions about admissibility, it is clear that the criterion is used a lot.<sup>107</sup> It has served the Court well in being able to deem a huge array of cases inadmissible. The vagueness of the criterion has made it flexible and adaptable. The decisions after the judges took over the admissibility process are mostly well-written and well-explained. See for example *Boso v. Italy*,<sup>108</sup> *Novotka v. Slovakia*,<sup>109</sup> *Grishchenko v. Russia*<sup>110</sup> for cases that are not problematic to understand and where the Court gives a fair reasoning for the result. There are even cases that are given admissibility decisions by the Grand Chamber, such as *Gratzinger and Gratzingerova v. The Czech Republic*.<sup>111</sup> That decision provides good reasoning for the result, but at the same time, the fact that the Grand Chamber had to decide on its admissibility is contradictory to the ordinary meaning of “manifestly ill-founded”. The Grand Chamber only concerns itself with an admissibility decision if the case raises serious questions about the interpretation of the Convention or its Protocols or when the results may deviate from the jurisprudence of the Court.<sup>112</sup> It means that a very wide interpretation of the criterion is applied.

On the other hand, there is a better connection between the Court’s case law from judgements and the admissibility decisions.<sup>113</sup> When the admissibility decisions refer to judgements and their jurisprudence regarding the substantial rights, it is easier to understand why a claim falls outside of the how the substantial provisions have been interpreted, and is manifestly ill-founded. In general, the development of the criterion and the development of the substantive rights make it less problematic to understand the wide interpretation of the criterion. But there

---

<sup>107</sup> A simple search in HUDOC comes up with more than 4000 decisions that are deemed inadmissible by «manifestly ill-founded»

<sup>108</sup> *Boso v. Italy* (2002), no. 50490/99

<sup>109</sup> *Novotka v. Slovakia* (2005), no. 74459/01

<sup>110</sup> *Grishchenko v. Russia* (2004), no. 75907/01

<sup>111</sup> *Gratzinger and Gratzingerova v. The Czech Republic* (2002), no. 39794/98

<sup>112</sup> ECHR art. 30

<sup>113</sup> For example *A. v. the Netherlands* (2013), no. 60538/13 and *Kopta v. Poland* (2014), no. 34997/04

are still cases where it is hard to understand why they were deemed manifestly ill-founded. The case discussed below is an example of such a case.

#### 4.3.1.2 *Younger v United Kingdom*<sup>114</sup>

The case concerns a mother whose son committed suicide in prison. She claimed a violation of article 2, saying that the State had a positive obligation to protect her son's life. The applicant's son had repeatedly asked to see a doctor, but the prison personnel did not think he needed one, so they did not give him access to a doctor until he actually said he was going to kill himself. By then it was too late, he had hung himself in a bolt that was left exposed because the hatchet in the door was open. The most central question was if the State could be liable because the prison personnel had let the hatchet be open, especially because they had recently been given an internal memorandum stating that the cell door hatchet should be closed when the cell was occupied. The Court said that the failure to close the hatchet in this case did not amount to a violation of article 2. The Court then proceeded to deem the claim manifestly ill-founded. But after that, the Court decided to express its "particular disquiet"<sup>115</sup> as to why the internal memorandum was not followed in this case by letting the cell door hatchet remain open when the cell was occupied by a prisoner. It is difficult to understand how the Court can critique the circumstances in the case without feeling the need to let the Court decide on the merits. How can a claim be manifestly ill-founded when the Court finds it necessary to express its disquiet about the situation? This is another example of a case which probably should have been deemed admissible, even though the Court might have come to the conclusion that there was no violation.

#### 4.3.2 **Protocol 14 – the addition of a new admissibility criterion**

The second big change that can have an impact on "manifestly ill-founded" is the addition of a new admissibility criterion concerning the merits. The new criterion was added with Protocol 14, and is in short called "significant disadvantage".<sup>116</sup> It means that if you have not suffered a significant disadvantage, your case is not admissible unless the case has not been fairly and properly conducted in the home country or if it is possibly about very serious

---

<sup>114</sup> *Younger v. United Kingdom* (2003), no. 57420/00

<sup>115</sup> *Ibid.*

<sup>116</sup> Article 35(3)(b) of ECHR



violations of the human rights in the Convention and its Protocols.<sup>117</sup> The fear of the continuing rise in the caseload was one of the factors that made this change happen.<sup>118</sup> The new criterion will not by itself be the solution to the problems with the ever increasing caseload, “(o)nly a comprehensive set of interdependent measures tackling the problem from different angles will make it possible to overcome the Court’s present overload”.<sup>119</sup> Among the solutions envisaged, measures needed also to be taken at national levels, securing the Convention rights are primary the responsibility of the State Parties.<sup>120</sup> This part will look at case law concerning the new criterion before looking at the use of “manifestly ill-founded” and see if the new criterion has affected it in any ways.

#### 4.3.2.1 Significant disadvantage – an overview

The new criterion came into force as a means of trying to get rid of the huge backlog of cases that the Court experienced, a way of making the Court more efficient.<sup>121</sup> The criterion was reserved for Chambers and the Grand Chamber for the first two years, so that jurisprudence could be established.<sup>122</sup>

In *Ionescu v. Romania*<sup>123</sup> the Court stated that the case was neither incompatible with the provisions of the Convention or its Protocols, nor was it manifestly ill-founded or an abuse of the right of application,<sup>124</sup> so the Court went on to examine if it could fall under the “significant disadvantage” criterion. The case concerned a claimed loss of 90 euros, and not having a fair trial. There obviously was something to the case because the case was not manifestly ill-founded, but the Court said that the loss the applicant claimed was limited.<sup>125</sup> Then the Court went on to evaluate if respect for human rights required the application to be examined on the merits, which it concluded that it did not. Lastly, the Court said that the case

---

<sup>117</sup> Ibid.

<sup>118</sup> Explanatory Report to Protocol no.14, para. 13

<sup>119</sup> Ibid., para. 14

<sup>120</sup> Ibid., para. 15

<sup>121</sup> Ibid., esp. para. 77-85

<sup>122</sup> Ibid., para. 105

<sup>123</sup> *Adrian Mihai Ionescu v. Romania* (2010), no. 36659/04

<sup>124</sup> Ibid. para. 29

<sup>125</sup> Ibid. para. 35

had been duly examined by a Court in Romania, and concluded that the claim fell under the new criterion. This is one type of application of the new criterion, where the application would have been deemed admissible because it was not stopped by any of the other admissibility criteria. The new criterion makes it possible for the Court to weed out cases that are not of great importance. But the two safety vents make sure that cases where respect for human rights require them to be examined on the merits or cases that have not been duly examined by the judicial system of the concerned State, are not possible to deem inadmissible within the new criterion. The new criterion was established to enable a “more rapid disposal of unmeritorious cases”, but it would also result in cases that would have resulted in a judgment earlier, now being deemed inadmissible.<sup>126</sup>

In another decision, the Court said that “*the new criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court*”.<sup>127</sup> This means that the cases that this criterion is meant to apply to are cases where there might have been a violation, but the violation is not severe and it has not presented the applicant with any significant disadvantage, e.g. the applicant has not suffered a great loss. The aforementioned case concerns non-pecuniary damage, so the new criterion is not only concerned with applications where there is a pecuniary loss. Cases where the applicant has not suffered significantly or where the violation has not been of a certain severity are also possible to deem inadmissible under this provision. Another example of non-pecuniary loss being deemed inadmissible under the new criterion is found in *Gagliano Giorgi*.<sup>128</sup> In that case, the applicant claimed a violation of article 6 because of unreasonably long criminal proceedings. The applicant wanted compensation. The Court, however, said that since the sentence had been reduced, that in itself was compensation and as a result of that he had not suffered any significant disadvantage.<sup>129</sup>

---

<sup>126</sup> Explanatory Report to Protocol no. 14, para. 79

<sup>127</sup> *Ladygin v. Russia* (2011), no. 35365/05

<sup>128</sup> *Gagliano Giorgi v. Italy*

<sup>129</sup> *Ibid.* para. 57 and 58

One of the advantages with this criterion, is the fact that it might be easier to use than “manifestly ill-founded”, it does not necessarily require the Court to go into the substantial provisions the applicant has claimed a violation of. When the Court does not have to interpret and apply the substantial provisions, it should be easier and faster for them to deem cases inadmissible. Even though this criterion is also a criterion that concerns the merits, it requires less than what an evaluation regarding “manifestly ill-founded” does. It also means that the Court does not have to take a position in situations of disputed facts, like for example in *Burov v. Moldova*.<sup>130</sup> Here, the Court started with applying the new criterion.<sup>131</sup> To determine if the applicant has suffered a significant disadvantage it is not necessary to look at the substantial provision, but mostly just look at the loss itself because that is what is decisive. When applying the “manifestly ill-founded” criterion, the Court has to establish what facts it will base its decision on, if the facts are contested, and then apply the substantial provision to the facts in order to see if it falls outside of how the provision has been interpreted by the Court. By applying the new criterion, especially if the Court does it on its own accord before doing anything else, it can be more efficient. In 2012, after the initial 2-years period reserved for only the Chambers and the Grand Chamber, it could also be used by committees and the single judge formation.

#### 4.3.2.2 Has the new criterion affected the interpretation of “manifestly ill-founded”

This part will look at “manifestly ill-founded” in light of the new criterion and see if the new criterion has affected the use or interpretation of “manifestly ill-founded”. Should “manifestly ill-founded” be interpreted stricter now, seeing as it is not alone on being able to deem a case inadmissible regarding the merits? Can the new criterion be used on some cases that “manifestly ill-founded” has been used on before, and will the result be easier to understand if the new criterion is applied instead of “manifestly ill-founded”? These are some questions that this part will try to answer.

One of the main questions concerning this period was if the new criterion has made the interpretation of “manifestly ill-founded” stricter. Based on the study of the case law, the new criterion has probably not changed the interpretation of “manifestly ill-founded” a whole lot.

---

<sup>130</sup> *Burov v. Moldova* (2011) no. 38875/03

<sup>131</sup> *Ibid.* para. 22

The interpretation of “manifestly ill-founded” has evolved over time together with the interpretation of the substantial rights within the Convention, and also together with the increasing caseload. The increasing caseload has probably had the biggest influence on “manifestly ill-founded”, not the new criterion. There might be cases where both of the criteria could have been used, and there might be cases where “manifestly ill-founded” is still used instead of using “significant disadvantage”, which might fit better. For example the claim about being able to apply for an early release in *Glinski v. Poland*<sup>132</sup> could instead of falling outside of article 7, be seen as not being a significant disadvantage. But, the Court did not use the “significant disadvantage” criterion in that case, so this observation is purely a de lege ferenda one.

In a lot of the cases deemed inadmissible with “significant disadvantage” the Court starts with applying the new criterion, meaning that it does not say anything about the other criteria. An example of a claim which might have been deemed manifestly ill-founded if it had not been for the use of “significant disadvantage” could be *Gagliano Giorgi*.<sup>133</sup> As said above, it was about a claimed violation of article 6 because of lack of compensation for unreasonable long criminal proceeding. The Court could probably have taken a lot of the same approach; said that the applicant had been compensated with a reduced prison sentence and then said that since he had been compensated, there had been no violation and the claim had been manifestly ill-founded. In this case it is better to use the new criterion, saying that he has not suffered any “significant disadvantage” because by doing so the Court does acknowledge that the State might have violated the provision but that the violation is not severe enough. A former judge of the Court, Françoise Tulkens, also expressed that some trivial cases were sometimes previously dealt with under “manifestly ill-founded”, which would perhaps mean that he now thinks that these cases fit better under the new criterion.<sup>134</sup> Sometimes, seen from the applicant’s point of view, the mere fact that the claimed violation is not denied per se can help them come to terms with the inadmissible result. It might be harder for the applicant to understand the result when the applicant strongly feels that there has been a violation of one of the substantial rights but then the Court stretches the “manifestly ill-founded” criterion and

---

<sup>132</sup> *Glinski v. Poland* (2014), no.59739/08

<sup>133</sup> *Gagliano Giorgi v. Italy*

<sup>134</sup> Tulkens (2010), p. 170

says that there is no violation. The fact that there might have been a violation but that the violation is not severe enough for international courts to deal with is perhaps easier to understand.

Seeing as a wide interpretation of “manifestly ill-founded” is established, the Court will probably continue to use it a lot. The new criterion will most likely be of use in some cases that earlier would have been deemed manifestly ill-founded. So maybe the criterion will be interpreted a bit stricter, but I do not think it will affect “manifestly ill-founded” a lot. Maybe it will be different in the future, which will be commented upon later in this paper. But as of now, when the Court has a considerable backlog of cases,<sup>135</sup> the best way to deal with it and get on top of it is to continue the use of “manifestly ill-founded” in mostly the same way and also apply “significant disadvantage” in the cases where that criterion fits. That way the Court will be able to deal with the cases that are most important and are worthy of the time of an international court. The new criterion is also meant for cases which could otherwise have resulted in a judgement, but is of such little importance that it is not worthy of the Court’s time. In those cases, the new criterion does not affect the use of “manifestly ill-founded” at all.

## **5 A closer look at some of the criticism, and a look into the future**

### **5.1 Introduction**

This chapter will focus on the drawbacks and benefits with the criterion through looking at some of the criticism it has received. And there will also be a section about how the future and the current reform work can influence the criterion.

### **5.2 The admissibility process’ blessing and curse**

The criterion can be said to be the admissibility process’ blessing because this criterion, more than any of the other admissibility criteria, can be interpreted into encompassing a lot of

---

<sup>135</sup> Annual Report 2013, p. 191

different scenarios. And it really has been used for a wide array of scenarios throughout the years. It has been a blessing in the way that it is a very open criterion, it was up to the former Commission and now the judges to decide what cases fall into this category. This criterion has grown together with the increasing caseload. The flexibility of this criterion has also enabled it to evolve together with the evolution of the substantive rights in the Convention. It has certainly played a huge part in enabling the Court to weed out many cases, even though it has not been enough to keep the Court from having a big backlog the last decade. But had it not been for this criterion, the Court would have probably been incapacitated by the enormous caseload.

However, the flexibility and adaptability of the criterion also means that it is a very complex criterion. And with complexity comes difficulty in predicting what the criterion encompasses for the people who want to send an application to the Court. A lot of the other admissibility criteria are rather predictable and straightforward, at least more so than “manifestly ill-founded”. The complexity and flexibility of “manifestly ill-founded” make it in at least some cases quite hard to assess up front if the case will be deemed inadmissible or not, and thus making it hard for the applicants to evaluate whether or not they should send the case to the Court. If it is clear that the case is not admissible, then it will in most cases probably not be sent, at least not if the person has sought out some legal advice. In some cases, maybe cases that fall into the category of the “confused or far-fetched” applications, it will be easy for a lawyer to see that the case will most likely be deemed inadmissible. But, for many cases that fall into the “no clear or apparent violation” and some of the “fourth instance” cases, it can be hard for even a lawyer to give good advice on the admissibility of the case. And it is certainly not easy for people without a background in law to determine if their case is manifestly ill-founded or not. This uncertainty can be one of the reasons for the overwhelming amount of applications the Court has gotten the last decades. The fact that it is not easy to predict the outcome of the admissibility process regarding the “manifestly ill-founded” criterion could have led to more doubtful cases being sent to the Court. When it is hard to evaluate if the application will pass the admissibility process or not, most people will send their case in the hope of getting it past the admissibility stage. In this regard, the criterion is the admissibility process’ curse. It has meant that the amount of applications that could be deterred from ever being sent to the Court has been low. Had the criterion been clearer and easier to understand, some applications would probably never have been sent to the Court. Support for those views

can be found in the literature.<sup>136</sup> And the fewer applications the Court gets, the less need does it have for a wide interpretation of “manifestly ill-founded”.

The makers of the Convention, who feared an over-flood of cases, probably saw the flexibility of the “manifestly ill-founded” criterion as a safety valve, a way to make sure that the former Commission could control the flood of cases they feared. The flexibility the criterion has provided has probably outweighed the negative things about it though. The criterion’s adaptability is crucial when one has such a dynamic interpretation as the European Court of Human Rights. Human rights are constantly evolving, making an admissibility criterion which can evolve together with them a good thing.

### **5.3 Problems relating to the decisions taken by the single judge formation and committees without further examination**

Protocol 11 gave committees of three judges the ability to unanimously declare applications inadmissible without further examination if they are clearly inadmissible.<sup>137</sup> According to the Rules of Court rule 33 (5)<sup>138</sup> and rule 53 (2)<sup>139</sup> those decisions are not published; they are only sent to the applicant by a letter. These decisions are not examined fully on the merits; they are deemed manifestly ill-founded and inadmissible after a Committee has looked at the case. No further inquiries are made. With Protocol 14, a Single Judge is also allowed to follow this procedure.<sup>140</sup> It has served the Court well in enabling the Court to deem tens of thousands of cases inadmissible with little effort, making the Court more efficient and able to deal with the enormous backlog of cases. This might work fine with admissibility decisions concerning procedural or jurisdictional grounds because they are more straightforward, but for the grounds concerning merits, and especially “manifestly ill-founded”, it can be problematic.

---

<sup>136</sup> Keller (2010) p. 1047

<sup>137</sup> Article 28 as amended by Protocol no. 11

<sup>138</sup> Rules of Court, 2002 version, as I was unable to obtain the 1998 version that came into force after Protocol no. 11

<sup>139</sup> Ibid.

<sup>140</sup> Article 27 as amended by Protocol 14 and Rules of Court (2014) Rule 52A

In these cases, there is no written decision as the ones published. There is only a short letter to the applicant stating the application is inadmissible, for instance that there is no appearance of a violation, and therefore the claim is manifestly ill-founded.<sup>141</sup> This makes the use of “manifestly ill-founded” more problematic. Firstly, because it may be difficult for applicants who receive these letters to understand why their claim is inadmissible. Not many people without a background in law will probably understand what the “manifestly ill-founded” criterion means, especially since it is not interpreted as having the ordinary meaning of those words. And if the applicants do not understand why their claim is rejected, it can in many cases worsen the feeling of being unfairly treated. This is also commented upon by Simona Granata in an article where she says that “(t)ime must be saved as much as possible through more efficient procedures of examination, not by refraining from informing applicants about why their case is inadmissible.”<sup>142</sup> She also says that it is not demonstrated that the people of Europe have so much trust in an international institution that these decisions require.<sup>143</sup>

Secondly, another problem is the lack of transparency when giving such decisions. There is nothing that indicates how the judge(s) came to the result. The judge could have any reason for wanting to pronounce a case inadmissible. I am not saying that the judges are not impartial and doing a proper job, but with no transparency one cannot be certain. As stated by Janneke Gerards in an article,<sup>144</sup> the limited reasoning of these decisions can be problematic in light of the right to a fair trial and openness found in the Convention. In several cases the Court has found violations because of lack of reasoning and argumentations from the national courts,<sup>145</sup> so it is rather ironic that the Court does this themselves when they are, in fact, the ultimate protector of human rights for the people within their jurisdiction.

Another reason why the limited reasoning might be problematic is that decisions can block the possibility of getting one’s case looked at by another human rights body. The article referred to above is about a case<sup>146</sup> that was deemed manifestly ill-founded by a Single Judge.

---

<sup>141</sup> Leach (2011) p. 41 and appendices 15 and 16

<sup>142</sup> Granata (2010), p. 115

<sup>143</sup> Ibid.

<sup>144</sup> Gerhards (2014)

<sup>145</sup> Ibid. p. 7

<sup>146</sup> Maria Cruz Achabal Puertas v Spain



The applicant was unhappy with the result and took her case to the Human Rights Committee. Not only did the Human Rights Committee criticise the lack of reasoning of the decision, it also criticised the result itself. The Human Rights Committee did not find the claim to be ill-founded; it found it to be well-founded, and that there had been a violation of article 3. The problem in this case was that if the case had been examined on the merits by another body, it could not be examined by the Human Rights Committee.<sup>147</sup> But the Human Rights Committee concluded that the limited examination of the case, even though the “manifestly ill-founded” criterion concerns the merits, did not fulfil that criterion and the Committee could examine the case. The “manifestly ill-founded” criterion’s complex and inconsistent practice make it perhaps unsuited for these kinds of decisions, especially by the single judge formation. If the decision is taken by a committee of three judges, then the decision has to be unanimous, and there is some judicial review in that. One judge being able to decide on admissibility with the “manifestly ill-founded” criterion might be problematic because the jurisprudence of the criterion is too unclear. The above-mentioned case is a good example of the dangers of the single judge formation’s decisions regarding “manifestly ill-founded”. The problem could be somewhat remedied by drawing up more specific criteria for application of the criterion, as suggested by Helen Keller and her co-authors in an article.<sup>148</sup> In that article, the aforementioned authors suggest putting a non-exhaustive list of criteria in the Rules of Court. That way, when giving these decisions, one could at least point to the relevant criterion under which the case fell and that could make it easier for the applicant to understand the rejection. Those criteria would also be of help to the judges who make these decisions, making it easier to see which cases that fit into the “manifestly ill-founded” criterion. If there are more criteria concerning which cases can be deemed manifestly ill-founded it would most likely make the decisions more well-founded because then the judge has to see if it fits into any of the criteria. Those criteria could also be helpful when evaluating if one should send an application to the Court in the first place.<sup>149</sup>

With the addition of “significant disadvantage”, there is a second criterion for deeming cases inadmissible because of the merits. This might also help remedy this unfortunate situation.

---

<sup>147</sup> Article 5(2)(a) of the First Optional Protocol to the ICCPR

<sup>148</sup> Keller (2010) p. 1047

<sup>149</sup> Ibid.

Some cases that could with doubt be placed in the “manifestly ill-founded” criterion can maybe fit better within the “significant disadvantage” criterion. This would make it easier for the judge(s) who apply it, and the applicant who receives the decision. As said earlier in this paper, it might be easier to understand that a claim falls under the “significant disadvantage” criterion because, with this criterion, the Court does not deny that there could have been a violation, but that the violation is not severe enough. This might give the applicant a small sense of justice, even though the case is rejected the notion of there being a violation is not rejected. The “significant disadvantage” criterion is perhaps more suitable for these kinds of decisions as it might be a bit easier to understand for the applicant and the public in general. This way of dealing with applications has been a big part in the Court having become more efficient, and even though there are some drawbacks, as long as one has capable and impartial judges, there shouldn’t be any problems in most cases.<sup>150</sup>

## **5.4 Has the criterion been interpreted too widely?**

After having looked at the case law and relevant literature, I will try to answer this question. There is no correct answer as this criterion is vague and flexible, and the travaux préparatoires does suggest that a wide interpretation would not be against the wishes of the makers of the Convention. These are my own reflections, drawn from the case law and other relevant materials.

### **5.4.1 How “manifestly ill-founded” has been used**

From the beginning the interpretation of the criterion was wide; many cases were deemed manifestly ill-founded by the Commission. In fact, in a lot of the early decisions the Commission also had to interpret the substantial provisions in the Convention before reaching its decision on admissibility. This can be looked at as problematic because it should have mainly been the Court which should be responsible for interpretation, application and developing jurisprudence. However, the lack of case law from the Court in the early days might justify the Commission’s interpretation of the rights in the Convention. Where the Court had not provided an interpretation, the Commission needed to interpret the rights themselves. But, in some of the cases, it was not obvious that the case was manifestly ill-

---

<sup>150</sup> Caflisch (2006) p. 409

founded. In the cases where the substantial provisions had not been interpreted by the Court, and it was not necessarily clear how they should be interpreted, the Commission should probably have let the Court adjudicate on the case and give a proper interpretation. The fear of the Court being over-flooded that the makers of the Convention had, had not been realised yet, and, therefore, the Commission should not have been so strict in applying “manifestly ill-founded”. The makers of the Convention did mean for the Commission to be able to look at the merits of the case before making a final decision about admissibility in cases where that was necessary,<sup>151</sup> but the Commission was a bit too liberal when it applied the criterion in the first decade.

The Powell and Rayner Report from 1989<sup>152</sup> gives a good indication about how the criterion was interpreted and used by the Commission. The dual approach explained here, that a case can be seen as manifestly ill-founded by looking at the application or that it may need further examination and submission from both parties before it becomes manifest that the case is ill-founded, is most likely how the makers of the Convention envisaged the admissibility process to work.<sup>153</sup> This approach might be somewhat difficult to understand. It might be frustrating for the applicants when their case is deemed manifestly ill-founded after a thorough look at the merits. But, it can also be reassuring for the applicants that their cases are closely looked at before a decision on admissibility is reached. If the applicant is invited to come with further submissions and answer some of the submissions that the respondent State provides, it might lead them to feel that their case got a fair chance and accept that their case was deemed inadmissible. Seen in the context of the fact that there needs to be a working and efficient admissibility process, the process regarding the use of “manifestly ill-founded” has to be like this. If only cases that appear to be manifestly ill-founded from the first look at the application could be deemed inadmissible, the amount of cases that had to be referred to the Court would be a lot higher. Many cases require further submissions and a thorough look at the merits before they are deemed manifestly ill-founded. Applications might lack crucial information, or sometimes a case can be viewed from another perspective when the State is also allowed to submit their side of the story. Human rights can be complicated, and the situations they apply

---

<sup>151</sup> See the chapter about the travaux préparatoires

<sup>152</sup> *Powell and Rayner v. the United Kingdom* (1989), no. 9310/81

<sup>153</sup> See my chapter on the travaux préparatoires

to can be equally complicated. Since they are supposed to be universal, human rights have to leave some room for interpretation and be able to fit a variety of different scenarios. Since the “manifestly ill-founded” criterion is a criterion that concerns the merits of the case, the merits need to be examined. So the use of the criterion like this is not a sign of a too wide interpretation, it is how it needs to be used in order to get the whole system to work.

But that is not to say that the former Commission or the Court have not interpreted it too widely in some cases, because, in some cases, it appears that they have done so. The best examples are the Iversen case<sup>154</sup> and the Younger case.<sup>155</sup> The lengthy and thorough process is not the problem; the application of “manifestly ill-founded” on the situation is the problem. Even after the thorough examination, it is hard to see how those cases can be manifestly ill-founded; they do not seem to fit into even the wide interpretation of the criterion. The way it has always been used, and probably was intended to be used is also after further examination and additional submission by both parties. But the case then has to appear to be ill-founded, and those cases do not appear to be ill-founded even at that stage.

#### **5.4.2 A way of dealing with all the applications**

One of early reasons for it being interpreted widely was probably because of the fear of the Court being over-flooded and the fact that a lot of States were afraid of the Court meddling too much in their internal affairs.<sup>156</sup> The Commission probably referred those cases that they thought were absolutely worthy of the Court’s time to the Court. As the caseload increased over the years, it became necessary from an efficiency point of view too, to use this to weed out cases which did not deserve the Court’s time, in order for the Court to be able to keep up with all of the cases. I think that the criterion has to a large degree become a criterion that evaluates if a case is worthy of the Court’s time more than if it is well-founded or not. The former Commission and now the Court have used this flexible criterion in a way that is probably outside of its ordinary meaning. But if it had not been for this criterion and its flexibility, the Court would probably not have been able to properly function at all.

---

<sup>154</sup> *I. v. Norway* (1963), no. 1468/62

<sup>155</sup> *Younger v. United Kingdom* (2003), no. 57420/00

<sup>156</sup> See my chapter about the travaux préparatoires

Someone explained this problem brilliantly by saying:

(t)he problem lies in the fact that the Commission is obliged to refer to one of the conditions of admissibility in order to reject an application, and lacking a better alternative may sometimes be forced to resort to the “manifestly ill-founded” criterion as a sort of last resort.<sup>157</sup>

This describes the situation very well in the fact that it acknowledged that the criterion might have been used on cases that do not fit well within the criterion, but at the same time they probably also meant that the Commission did so because the case was indeed not worthy of the Court’s time. Other authors have also expressed the same opinion, that the Commission has weeded out cases that they found to be ill-founded but that it was not necessarily manifestly so.<sup>158</sup> All in all, it has been necessary for the Commission and especially the Court in the recent years to use it like this in order to deal with the problems concerning the huge caseload. But it is a shame that some cases have been put in this category when they might be well-founded. Especially with the application by the single judge formation and the committees without further examination it can be problematic. This is because there is no real opportunity to control the use of the criterion when the decisions are not explained or published. And this might lead to an even broader interpretation of the criterion. But it also has its advantages, and most of the applications that are deemed inadmissible like this are in fact inadmissible. When the ill-foundedness is not manifest from the beginning, the Court examines the case further. And if a uniform application of the criterion can be accomplished, especially by the single judge formation and the committees, it would be easier to understand this criterion. The suggestion that there be a list with criteria added for instance to the Rules of Court regarding the application of this criterion is a good idea.<sup>159</sup>

### 5.4.3 Conclusion

I do think that the criterion has been interpreted too widely in some cases but that in most situations the application of it as more of a worthiness test than an evaluation of its ill-foundedness has not been problematic. The addition of the new criterion was a step in the right direction, hopefully making “manifestly ill-founded” a bit less needed and the

---

<sup>157</sup> Goimen (1996) p. 66

<sup>158</sup> Harris (1995), p. 627

<sup>159</sup> See chapter 5.3

interpretation of it a bit stricter. “Manifestly ill-founded” will probably continue being a way of weeding out undeserving cases, it can indeed be said that it is a dustbin, but it is a dustbin that is necessary for the Court to function. The Court needs to be able to cut off a chunk of the caseload in order to keep up its work as the protector of human rights in Europe.

## **5.5 Reforms – the future**

The huge caseload did set in motion big changes with Protocol 11 and Protocol 14. There is further talk about making the Court more efficient since those two protocols did not completely solve the problems with the massive caseload. They did, however, help, and the cases pending before the Court are now decreasing instead of increasing, which is a very good thing. The number of pending applications went down by 22% from the end of 2012 to the end of 2013.<sup>160</sup> The number of applications which were rejected increased from 2012 to 2013, which shows that the Court is more efficient.<sup>161</sup> This last part will look at the future of the Court, and see how the future can affect the use of “manifestly ill-founded”.

### **5.5.1 Can significant disadvantage lessen the need for “manifestly ill-founded” and make its interpretation stricter?**

In the future it might be okay to do something about the interpretation of the “manifestly ill-founded” criterion, but at the present time a drastic change in the use and interpretation of “manifestly ill-founded” would not be favourable to the Court. As of now, the established case law concerning both the “manifestly ill-founded” criterion and the Convention rights, plus the better reasoning of the judges make it less problematic to understand why cases are deemed manifestly ill-founded. “Significant disadvantage” has probably not become as effective as one had originally hoped,<sup>162</sup> but the single judge formation has probably played a great part in making the Court more efficient and being able to get on top of the huge caseload. The effectiveness of the criterion has been a topic which has been discussed a lot, and while some say it endangers the individual’s right to access to court, others are saying that

---

<sup>160</sup> Annual Report 2013, p. 191

<sup>161</sup> Ibid.

<sup>162</sup> A quick search in HUDOC shows that it has not been used a lot in decisions by the committees, Chambers or the Grand Chamber

the Court should indeed not concern itself with small claims, it should rather be a Court which deals with the big problems.<sup>163</sup>

But if the trends continue, if the Court manages to get on top of its huge caseload, then the use of “manifestly ill-founded” can hopefully be less needed, and the new criterion can maybe play a greater role. Protocol no. 15 will amend the “significant disadvantage” by removing the safety vent saying that the case has to have been duly examined by national tribunals.<sup>164</sup> This is to try to make the criterion more efficient and easier to use.<sup>165</sup> Maybe this can also play a part in lessen the need for a wide interpretation of “manifestly ill-founded”.

### 5.5.2 The further reform work

The reform process has continued after the addition of Protocol 11 and Protocol 14, with conferences in Interlaken in 2010, Izmir in 2011 and Brighton in 2012. During these conferences, the efficiency of the Court in dealing with both decisions and judgements were one of the main points. At the Interlaken Conference the conference stressed the importance of, among other things, strengthening the principle of subsidiary<sup>166</sup>, stressed the importance “*of ensuring the clarity and consistency of the Court’s case law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court’s jurisdiction*”<sup>167</sup> and stressed the importance of getting the number of clearly inadmissible applications down and effectively filtering out of these applications.<sup>168</sup> The Izmir Declaration concerns itself with much of the same issues as the Interlaken Declaration. It states that the Court should “*(a)pply fully, consistently and foreseeably all admissibility criteria (...)*”.<sup>169</sup> It also says that the Court should give full effect to the new admissibility criterion,<sup>170</sup> and that

---

<sup>163</sup> For an early review of the debate see: Hioureas (2006), pp. 720-721 and p. 720 n. 14

<sup>164</sup> Protocol no. 15, art. 5

<sup>165</sup> Explanatory Report to Protocol no. 15, para. 23

<sup>166</sup> Interlaken Declaration, The Conference (2)

<sup>167</sup> Ibid., The Conference (4)

<sup>168</sup> Ibid., The Conference (6)

<sup>169</sup> Izmir Declaration, F(2)(a)

<sup>170</sup> Ibid., F(2)(b)

the Court should “(c)onfirm in its case law that it is not a fourth-instance court (...)”.<sup>171</sup> The latter statement concerns the “manifestly ill-founded criterion”, as cases that are fourth-instance cases are to be deemed manifestly ill-founded.<sup>172</sup> The Brighton Declaration also states much of the same.<sup>173</sup> It also speaks specifically of “manifestly ill-founded” and says that the application of it needs to be strict and consistent. And, that the Court should consider using the criterion when the case has been duly examined by a domestic Court, unless the application raises serious questions about the interpretation or the application of the Convention.<sup>174</sup> These conferences also discuss the possible need for another or better filtering mechanism for clearly inadmissible cases,<sup>175</sup> and the importance of information dissemination, both to agents of the State and to the public in general, regarding the Convention rights and the admissibility process.<sup>176</sup>

The most interesting thing here is of course the statement about “manifestly ill-founded” and what it implies. What the Declarations say is that the use of “manifestly ill-founded” should continue to be as it is now, meaning that they apply a rather wide interpretation of it. This also reflects what is said earlier in this paper about the criterion having become a test of worthiness more than a test of the well-foundedness. The Declarations urge the Court to use the criterion where the case has been duly examined by a national court, unless of course it poses serious questions. This can be taken to mean that the real issue is whether or not the case is worthy of the Court’s time. This again is in line with the new criterion, “significant disadvantage”, which is also based on the worthiness of the case, even if there has been a violation, one can only get one’s case to the Court if one has suffered a significant disadvantage. This is also in terms with the Court being subsidiary to the national systems and the fact that the Declarations stress the need to strengthen the principle of subsidiarity. The Court should only deal with cases that are of importance, cases that raise serious concerns

---

<sup>171</sup> Ibid., F(2)(c)

<sup>172</sup> Practical Guide on Admissibility, pp. 69-71, and for example *Anderson v. the United Kingdom* (1999), no. 44958/98

<sup>173</sup> Brighton Declaration, chapter A and C

<sup>174</sup> Ibid., (15)(d)

<sup>175</sup> Brighton Declaration, p. 1 para. 6, Izmir Declaration, chapter C, Interlaken Declaration, chapter C

<sup>176</sup> Izmir Declaration, para. 5 and chapter B, Brighton Declaration, para. 9(c)(v)-(vii)



about human rights. That way, the Court can continue to function properly and not drown in the amount of applications it gets.<sup>177</sup>

Another interesting thing here is the uniform and rigorous application of the admissibility criteria which is called for. This is especially important with “manifestly ill-founded” seeing as the application of it is so wide and uncertain at times. If a more uniform application of the criterion could be achieved that could mean that there will be less of a problem with the use of the criterion, even in the cases by the single judge formation and committees. A more uniform application of “manifestly ill-founded” is probably a bit difficult to achieve. But the suggestion that one adds a list of criteria for the application of it to, for example, the Rules of Court, could probably make the application of it more uniform.<sup>178</sup> And that again will create transparency and a clearer case law, which would hopefully make another one of the important things that the Conference stressed happen, namely that the number of clearly inadmissible application decreases. The fact that the Conference also stresses the importance of strengthening the principle of subsidiarity is also a way to get the number of applications down. If the State Parties can manage to deal with as much as possible at the national level and fix the structural problems in their national systems which cause repeated violations of human rights, then there would be fewer applications too. The Conference also stressed the importance of rigorous application of the admissibility criteria, which is also a way of controlling the flow of cases that reaches the Court for a judgement.

The need for another filtering mechanism is probably not an easy thing to achieve. And, the filtering mechanism can become too effective and even filtering out cases which are in fact well-founded, making the Court lose its credibility amongst the State Parties and most importantly amongst the people. This was commented upon very well by the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, which stated the following:

Moreover, constant seeking for greater “productivity” obviously entails the risk that applications will not receive sufficient, or sufficient collective, consideration, to the

---

<sup>177</sup> Interview with President Luzius Wildhaber (2004)

<sup>178</sup> See chapter 5.3

detriment of the quality of judgments; on this account as well, the credibility and authority of the Court would suffer.<sup>179</sup>

If another filtering mechanism is going to happen, it needs to maintain the integrity and credibility of the Court while processing an even higher amount of cases than what currently is processed every year. In 2013 93,397 were decided on, either by judgement or a decision. It is hard to see how they can come up with a viable solution other than further expanding the number of judges or creating a new sort of Commission with a large staff which could deal with the cases properly. And that requires further huge reforms. Another solution might be to make up even more admissibility criteria, but that is also a difficult thing to do. One can only hope that “significant disadvantage” will play an ever greater part in the future, especially when Protocol 15 enters into force.

The last important thing for the use of “manifestly ill-founded” which are commented upon in the Declarations are the dissemination of information to agents of the State and to the public, and education of agents of the State, or any other personnel who might deal with situations where human rights can be violated. This is very important, together with the strengthening of the principle of subsidiarity. It would be helpful if the States trained their agents and other employees to be more aware of human rights. Another good thing will be for the States to make sure that if judgments against them reveal structural problems within the States which cause repeated violations, they would fix it in order to prevent more violations.<sup>180</sup> Information to the public about how the admissibility process works, and what the rights entails would also be of help. If people were more educated about the admissibility criteria and what the rights encompass, it would perhaps keep people from sending clearly inadmissible complaints. It is hard to address this problem because one cannot expect everyone to follow up on the jurisprudence of the Court. But independent National Human Rights Institutions could be of importance, they could help spread the word about human rights, help advice people about their cases and if they fall within the rights protected by the Convention and they

---

<sup>179</sup> Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (2001), para. 39

<sup>180</sup> Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem

could also help ensure that judgments are implemented and followed.<sup>181</sup> In an article Simona Granata suggest that the best way might be to better educate lawyers about the admissibility process, and also try to deter lawyers from purposefully advising people to take clearly ill-founded cases to the Court in the first place.<sup>182</sup> In a response to the aforementioned article, Tulkens also says that lawyers need to be better trained and that in those countries where most applicants does not consult a lawyer, there should be more information provided, for example, by NGOs.<sup>183</sup> Or one could also look into forcing applicants to get a lawyer.<sup>184</sup> Much of the responsibility should be put on the State Parties, which means that they have to make sure the members of their courts and law enforcement and other state agents have the required knowledge of the Convention. When Protocol 16<sup>185</sup> enters into force it will be a welcome help to the national court. Protocol 16 lets the highest national courts ask the Court for an advisory opinion, and that can help the national courts stop or amend violations of human rights.<sup>186</sup>

## 6 Conclusions – the future of the criterion

I personally think that the solution to the huge caseload and the high amount of clearly inadmissible applications, even if they now are processed faster and more effectively by the Court, lies within the State Parties themselves. If the States make an effort to change the conditions that facilitate the violations of human rights, then the number of applications to the Court can decrease. The State Parties must take some of the blame for the huge caseload themselves<sup>187</sup> so now it is time to play the ball over to the State Parties to make them work more towards fewer applications being sent to the Court. The Court has become more effective, but it cannot deal with the huge caseload alone. The dangers of streamlining the process with the Court too much are big, and the obvious solution would not be to make the

---

<sup>181</sup> Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (2001), para. 46-47, Brighton Declaration, para. 9(c)(i)

<sup>182</sup> Granata (2010), p. 115

<sup>183</sup> Tulkens (2010), p. 172

<sup>184</sup> Ibid.

<sup>185</sup> Protocol 16 art. 1

<sup>186</sup> Explanatory Report to Protocol no. 16, para. 7-8

<sup>187</sup> Beernaert (2004) p. 546-547

Court weed out even more cases, what we have to aim towards is to decrease the number of applications that are sent to the Court. And the only way to do that is to stop violations from happening. The Court should indeed keep focusing on the important cases, the cases that pose serious questions of interpretation or applications, and the cases that can reveal structural problems within the State Parties that cause repeated violations.<sup>188</sup> The Pilot Judgment Procedure can play a vital role here.<sup>189</sup> But “manifestly ill-founded” will play the biggest role, I think. If and when the caseload decreased drastically, if one manages to keep clearly inadmissible or not so important cases from ever reaching the Court, then the interpretation of “manifestly ill-founded” can be stricter, and it will be used less and perhaps only on cases that fit its ordinary meaning. As of now, until that happens, or one gets another filtering mechanism, the wide interpretation and application of “manifestly ill-founded” needs to continue in order for the Court to be able to deal with the cases that are actually worthy of its time and the cases which can come with important contributions to the field of international human rights law.

---

<sup>188</sup> Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (2001), para. 98

<sup>189</sup> See Information note issued by the Registrar on The Pilot-Judgment Procedure

## 7 Bibliography

### 7.1 Case law

#### 7.1.1 Judgements – European Court of Human Rights

- Wemhoff v. Germany*, 27 June 1968, Series A no. 7
- Matznetter v. Austria*, 10 November 1969, Series A no. 10
- Golder v. the United Kingdom*, 21 February 1975, Series A no. 18
- Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24
- Tyrer v. the United Kingdom*, 25 April 1978, Series A no. 26
- Marckx v. Belgium*, 13 June 1979, Series A no. 31
- Airey v. Ireland*, 9 October 1979, § 25, Series A no. 32
- Johnston and Others v. Ireland*, 18 December 1986, Series A no. 112
- Loizidou v. Turkey (Preliminary Objections)*, 23 March 1995, Series A no. 310
- Selmouni v. France* [GC], no 25803/94, ECHR 1999-V
- Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI
- Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV
- Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, ECHR 2005-I
- Saadi v. the United Kingdom*, [GC], no. 13229/03, ECHR 2008
- Micallef v. Malta* [GC], no 17056/06, ECHR 2009
- Gagliano Giorgi v. Italy*, no. 23563/07, 6 March 2012, ECHR 2012

#### 7.1.2 Decisions – European Commission of Human Rights/European Court of Human Rights

- X. v. Austria*, no. 1127/61, Commission decision of 19th of September 1961, Collection 8, pp. 9-11
- X. v. the Federal Republic of Germany*, no. 627/59, Commission decision of 14<sup>th</sup> of December 1961, Collection 8, pp. 20-24
- X. v. Austria*, no. 913/60, Commission decision of 19<sup>th</sup> of December 1961, Collection 8, pp. 43-45

*X. v. the Federal Republic of Germany*, no. 920/60, Commission decision of 19<sup>th</sup> of December 1961, Collection 8, pp. 46-49

*X. and Y. v. The Federal Republic of Germany*, no. 1013/61, Commission decision of 10<sup>th</sup> of March 1962, Collection 8, pp. 106-111

*Planki v Austria*, nos. 596/59 and 789/60, Commission Report of 28<sup>th</sup> of March 1963, HUDOC

*X. v. Austria*, no. 1418/62, Commission decision of 21<sup>st</sup> of June 1963, Collection 12, pp. 1-17

*X. v. the Federal Republic of Germany*, no. 1628/62, Commission decision of 12<sup>th</sup> of December 1963, Collection 12, pp. 61-69

*X. v. Austria*, no 1747/62, Commission decision of 13<sup>th</sup> of December 1963, Collection 13, pp. 42-54

*I. v. Norway*, no. 1468/62, Commission decision of 17<sup>th</sup> of December 1963, HUDOC

*H.G. and W.G. v. the Federal Republic Of Germany*, no. 2294/64, Commission decision of 16<sup>th</sup> of December 1964, Collection 15, pp. 50-56

*X. v. Denmark*, no. 2518/65, Commission decision of 14<sup>th</sup> of December 1965, Collection 18, pp. 44-46

*X. v the Federal republic of Germany*, no. 2516/65, Commission decision of 23<sup>rd</sup> of May 1966, Collection 20, pp. 28-39

*X. v. the Germany*, no. 2413/65, Commission decision of 16<sup>th</sup> of December 1966, Collection 23, pp. 1-9

*X. v. Iceland*, no. 2525/65, Commission decision of 6<sup>th</sup> of February 1967, Collection 22, pp. 33-34

*X. v. Sweden*, no. 2358/64, Commission decision of 7<sup>th</sup> of February 1967, Collection 23, pp. 147-153

*X. v. the Netherlands*, no. 2383/64, Commission decision of 3th of April 1967, Collection 23, pp. 26-30

*X. v. Germany*, no. 2279/64, Commission decision of 31<sup>st</sup> of May 1967, Collection 23, pp. 114-124

*X. v The United Kingdom*, no. 3898/68, Commission Decision of 22th of July 1970, Collection 35, pp. 102-108

*X. v. the United Kingdom*, no. 5270/72, Commission decision of 8<sup>th</sup> of July 1974, Collection 46, pp. 54-61

*Kiss v United Kingdom*, no. 6224/73, Commission decision of 16<sup>th</sup> of December 1976, D.R. 7, p. 55

*McFeeley et al. v. the United Kingdom*, no. 8317/78, Commission decision of 15<sup>th</sup> of May 1980, D.R. 20, p. 44

*Council of Civil Service Unions et al. v. the United Kingdom*, no. 11603/85, Commission decision of 20<sup>th</sup> of January 1987, D.R. 50, p. 228

*Lawlor v. the United Kingdom*, no. 12763/87, Commission decision of 14<sup>th</sup> of July 1988, D.R. No. 57, p. 216

*Powell and Rayner v. the United Kingdom*, no. 9310/81, Commission Report of 19<sup>th</sup> of January 1989, HUDOC

*S. v. Austria*, no. 12592/86, Commission decision of 6<sup>th</sup> of March 1989, D.R. No. 60, p. 201

*Stallarholmens Plåtslageri o Ventilation Handelsbolag v. Sweden*, no. 12733/87, Commission decision of 7<sup>th</sup> of September 1990, D.R. No. 66, p. 111

*C.C. v. Switzerland*, no. 16247/90, Commission decision of 14<sup>th</sup> of October 1992, HUDOC

*Hjost-Lukkonen v. Sweden*, no. 18262/91, Commission decision of 30<sup>th</sup> of June 1993, HUDOC

*Anderson v. the United Kingdom* (dec.), no. 44958/98, 5 October 1999, HUDOC

*Banković and Others v. Belgium and 16 Other Contracting States* [GC], no. 52207/99, ECHR 2001-XII

*Boso v. Italy* (dec.), no. 50490/99, ECHR 2002-VII

*Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, ECHR 2002 VII

*Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I

*Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004, HUDOC

*Novotka v. Slovakia* (dec.), no. 74459/01, 8 November 2005, HUDOC

*Adrian Mihai Ionescu v. Romania* (dec.) no. 36659/04, 1 June 2010, HUDOC

*Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011, HUDOC

*Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011, HUDOC

*A. v. the Netherlands* (dec.), no. 60538/13, 12 November 2013, HUDOC

*Kopta v. Poland* (dec.), no. 34997/04, 11 February 2014, HUDOC

*Glinski v. Poland* (dec.), no. 59739/08, 12 February 2014, HUDOC

### **7.1.3 Human Rights Committee decisions**

*Maria Cruz Achabal Puertas v Spain* (1945/2010), CCPR/C/107/D/1945/2010 (2013); 20 IHRR 1013 (2013)

## 7.2 Literature

### 7.2.1 Articles

Beernaert, Marie-Aude *Protocol 14 and new Strasbourg procedures: towards greater efficiency? And at what price?* | European Human Rights Law Review, vol. 5 (2004) p. 544-557 (downloaded from westlaw.com)

Caflisch, Lucius *The Reform of the European Court of Human Rights: Protocol No. 14 and Beyond* | Human Rights Law Review. (2006) Vol. 6, Issue 2, p. 403-415 (downloaded from oxfordjournals.org)

Gerhards, Janneke *Inadmissibility Decisions of the European Court of Human Rights: A Critique of the Lack of Reasoning.* | Human Rights Law Review. (2014) Vol. 14, Issue 1, p. 148–158 (Downloaded from oxfordjournals.org)

Granata, Simona *Manifest Ill-foundedness and Absence of a Significant Disadvantage as Criteria of Admissibility for the Individual Application to the Court* | Italian Yearbook of International Law. (2010) Vol. 20, p. 111-123 (downloaded from Heinonline.org)

Hioureas, Christina G *Behind the Scenes of Protocol No.14: Politics in Reforming the European Court of Human Rights.* | Berkeley Journal of International Law. (2006) Vol. 24, p. 718-757 (downloaded from heinonline.org)

Keller, Helen, Andreas Fischer and Daniela Kühne *Debating the Future of the European Court of Human Rights after the Interlaken Conference: Two Innovative Proposals.* | European Journal of International Law. (2010) Vol. 21, No. 4, p. 1025-1048 (Downloaded from oxfordjournals.org)

Tulkens, Françoise *The Link Between manifest Ill-foundedness and Absence of a Significant Disadvantage as Inadmissibility Criteria for Individual Applications* | Italian Yearbook of International Law. (2010) Vol. 20, p. 169-179 (downloaded from Heinonline.org)

### 7.2.2 Books

Cameron, Iain *An Introduction to the European Convention on Human Rights.* 3<sup>rd</sup> ed. Uppsala, 1998

Castberg, Frede *Den Europeiske konvensjon om menneskerettighetene.* Oslo, 1971

Dijk, P. van, G.J.H. van Hoof *Theory and Practice of the European Convention on Human Rights.* 3<sup>rd</sup> ed. The Hague, 1998

Goimen, Donna, David J. Harris, Leo Zwaak *Law and Practice of the European Convention on Human Rights and the European Social Charter.* Strasbourg, 1996

Harris, D.J., M. O'Boyle and C. Warbrick *Law of the European Convention of Human Rights.* London, 1995.

Jacobs, Francis G., Robin C. A. White *The European Convention of Human Rights.* 2<sup>nd</sup> edition. New York, 1996

Leach, Philip *Taking a case to the European Court of Human Rights.* 3<sup>rd</sup> ed. Oxford, 2011



Lorenzen, Peer [et al.] (*art 10-59 samt tillægsprotokillerne*) /: *Den Europæiske Menneskerettighedskonvention: med kommentar*. 3rd ed. Copenhagen, 2011

***Collected edition of the "travaux préparatoires" of the European Convention on Human Rights by the Council of Europe***

I: *Preparatory Commission of the Council of Europe, Committee of Ministers, Consultative Assembly 11 May-8 September 1949*. The Hauge, 1975

II: *Consultative Assembly, second session of the Committee of ministers, standing Committee of the Assembly 10 August-18 November 1949*. The Hauge, 1975

IV: *Committee of experts, committee of ministers, conference of senior officials 30 March-June 1950*. The Hauge, 1977

## **7.3 International treaties**

European Convention on Human Rights, Rome 1950

Protocol no. 11 to the European Convention on Human Rights, Strasbourg, 1994

Protocol no. 14 to the European Convention on Human Rights, Strasbourg, 2004

Protocol no. 15 to the European Convention on Human Rights, Strasbourg, 2013

Protocol no. 16 to the European Convention on Human Rights, Strasbourg, 2013

Vienna Convention on the Law of Treaties, Vienna 1969

The International Covenant on Civil and Political Rights, New York, 1966

First Optional Protocol to the International Covenant on Civil and Political Rights, New York, 1966

## **7.4 Other documents related to the European Court of Human Rights and the Council of Europe**

### **7.4.1 Declarations**

High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, 19 February 2010 [http://www.echr.coe.int/Documents/2010\\_Interlaken\\_FinalDeclaration\\_ENG.pdf](http://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

High Level Conference on the Future of the European Court of human Rights, Izmir Declaration, 26–27 April 2011 [http://www.echr.coe.int/Documents/2011\\_Izmir\\_FinalDeclaration\\_ENG.pdf](http://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, 19-20 April 2012 [http://www.echr.coe.int/Documents/2012\\_Brighton\\_FinalDeclaration\\_ENG.pdf](http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

## **7.4.2 Documents from the European Court of Human Rights/Council of Europe**

Annual Report 2013 of the European Court of Human Rights, Council of Europe, Strasbourg, 2014 [http://www.echr.coe.int/Documents/Annual\\_report\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

European Court of Human Rights' "*The Online Admissibility Checklist*" <http://appform.echr.coe.int/echrappchecklist/default.aspx?lang=eng&cookieCheck=true> (last accessed April 21<sup>st</sup>, 2014)

Information note issued by the Registrar on The Pilot-Judgment Procedure [http://www.echr.coe.int/Documents/Pilot\\_judgment\\_procedure\\_ENG.pdf](http://www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

Practical Guide on Admissibility, Council of Europe/European Court of Human Rights, 2011 [http://www.echr.coe.int/Documents/Admissibility\\_guide\\_ENG.pdf](http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, EG Court (2001)1 Council of Europe (Sept. 27, 2001) <https://wcd.coe.int/ViewDoc.jsp?id=226195&Lang=fr> (last accessed April 21<sup>st</sup>, 2014)

Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem (May 12, 2004) <https://wcd.coe.int/ViewDoc.jsp?id=743257&Lang=fr> (last accessed April 21<sup>st</sup>, 2014)

Explanatory Report to Protocol No. 11 <http://conventions.coe.int/Treaty/EN/Reports/Html/155.htm> (last accessed April 21<sup>st</sup>, 2014)

Explanatory Report to Protocol No. 14 <http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm> (last accessed April 21<sup>st</sup>, 2014)

Explanatory Report to Protocol No. 15 <http://conventions.coe.int/Treaty/EN/Reports/Html/213.htm> (last accessed April 21<sup>st</sup>, 2014)

Explanatory Report to Protocol No. 16 <http://conventions.coe.int/Treaty/EN/Reports/Html/214.htm> (last accessed April 21<sup>st</sup>, 2014)

Rules of Court, European Court of Human Rights, Strasbourg, October 2002 [http://www.echr.coe.int/Documents/Library\\_2002\\_RoC\\_ENG.PDF](http://www.echr.coe.int/Documents/Library_2002_RoC_ENG.PDF) (last accessed April 21<sup>st</sup>, 2014)

Rules of Court, European Court of Human Rights, Strasbourg, 1 January 2014 [http://www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf) (last accessed April 21<sup>st</sup>, 2014)

## **7.5 Various other sources**

### **7.5.1 Other online documents**

Interview with President Luzius Wildhaber, “The reform is an absolute necessity”, April 21, 2004  
[http://www.coe.int/t/e/com/files/interviews/20040421\\_interv\\_wildhaber.asp](http://www.coe.int/t/e/com/files/interviews/20040421_interv_wildhaber.asp) (last accessed April 21<sup>st</sup>, 2014)

### **7.5.2 Dictionaries**

Merriam-Webster.com. <http://www.merriam-webster.com/dictionary/> (last accessed April 21<sup>st</sup>, 2014)

Oxford Advanced Learner’s Dictionary, New 8<sup>th</sup> ed. Oxford University Press, 2010

Oxford Dictionaries. Oxford University Press. <http://www.oxforddictionaries.com/> (last accessed April 21<sup>st</sup>, 2014)